

United States
Circuit Court of Appeals
For the Ninth Circuit.

GREAT NORTHERN RAILWAY COMPANY, a Corporation,
Appellant,
vs.
W. H. REID,
Appellee.

Transcript of Record.

Upon Appeal from the United States District Court for the
Eastern District of Washington, Northern Division.

Filed

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F. D. Monckton,
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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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Names and Addresses of Attorneys of Record.

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Washington,

Attorneys for Defendant and Appellant.

[2*]

*In the District Court of the United States for the
Eastern District of Washington, Northern Divi-
sion.*

No. 2545.

W. J. REID,

Complainant,

vs.

THE GREAT NORTHERN RAILWAY COM-
PANY, a Corporation,

Defendant.

Bill in Equity.

To the Judges of the District Court of the United
States, for the Eastern District of Washington,
Northern Division:

W. J. Reid, a resident and citizen of the State of
Washington, brings this, his bill, against the Great
Northern Railway Company, a corporation, organ-

*Page-number appearing at foot of page of original certified Transcript
of Record.

ized and existing under and by virtue of the laws of the State of Minnesota.

And thereupon your orator complains and says:

I.

That your orator is a citizen of the United States, and is a resident and citizen of the State of Washington, residing at Spokane, in Spokane County, State of Washington, and in the Northern Division of the Eastern District of Washington aforesaid.

II.

That the defendant is a corporation organized and existing under and by virtue of the laws of the State of Minnesota, and is a citizen and resident of the said State of Minnesota.

III.

That the defendant now is and has been continuously for more than two years last past a railroad corporation, created and existing under and by virtue of the laws of the State of Minnesota, and was at all times hereinafter mentioned conducting and carrying on a general transportation business of freight and passengers between and within the states of Minnesota, North Dakota, Montana, [3] Idaho and Washington and engaged in interstate commerce, and is the owner and sole lessee of that railroad known as the Great Northern Railway.

IV.

That on the 10th day of May, 1915, the Great Northern Railway Company was operating on the line and track of its railroad in Montana, a work train used in repair of said road being so operated in interstate commerce.

V.

That on said day near the station of Geyser, in the State of Montana, while your orator was at work as a cook on said work train so engaged in interstate commerce, as aforesaid, and in the cook-car thereof owned and operated by the defendant, the Great Northern Railway Company, and while your orator was in the employ of the defendant, the Great Northern Railway Company as aforesaid, said defendant company caused to be transported the car upon which your orator was fulfilling his duties as a cook as aforesaid, along the main track of the defendant as aforesaid, where a switch-track of said defendant left the main track of said defendant near Geyser, Montana, as aforesaid; that the switch point on said switch-track was old, defective and worn, which defect was known to the defendant or by the exercise of ordinary care and caution could have been known to the defendant; that the defendant further carelessly and negligently failed to properly fasten the switch point on said switch-track so leading off from the main track, as aforesaid, but carelessly and negligently allowed the same to remain partially open and insecure, and that said defendant, its agents and servants, so carelessly, negligently and unskillfully ran and operated said train on said date as aforesaid, at said place as aforesaid, along the main track and over the switch and switch point so leading from the main track as aforesaid that said cook-car on which your orator was riding as aforesaid was caused to be [4] and was derailed, and that your orator was thrown about said car in a violent manner; said de-

railment of said car as aforesaid causing the top of the cook-stove in said car as aforesaid to fall upon your orator's right foot and causing your orator to be thrown against the side of said car.

VI.

That as a direct and proximate result of said car leaving the track and your orator being violently thrown about said car, and said top of said cook-stove falling upon your orator's foot, your orator has suffered a double inguinal hernia, a broken arch of the right foot, a severe wrench of the back and a severe shock to his nervous system. That since said injuries your orator has suffered great and excruciating physical pains and agony and on account thereof has suffered a semi-paralyzed condition of both legs. And your orator does now suffer and in all probability will continue so to suffer during the rest of his natural life.

VII.

That prior to the time of the injuries complained of, your orator has been and was an absolutely well man, save and except for a very small rupture on the right side, and he had never lost a day's work on account of his health, and was capable and was earning from \$75 to \$100 per month and expenses. Your orator at the time of the injuries was of the age of forty-two (42) years and had a life expectancy of twenty-six (26) years.

VIII.

That since said injuries as heretofore stated, your orator has been unable to work save and except from time to time when absolute necessity demanded he has been able to work for a week or two at a time at

a wage of not to exceed twelve dollars (\$12) per week.

IX.

That since said injuries as heretofore stated, your orator [5] has been in very poor health, and your orator alleges that his injuries are permanent and that he will never be able as before sustaining them to earn his livelihood and your orator claims that he has been damaged in the reasonable sum of fifteen thousand dollars (\$15,000).

X.

That on account of the injuries as heretofore stated, your orator has had to expend or will have to expend the sum of one hundred fifty dollars (\$150) or more for physicians and for care and medical supplies, and in excess of the ten dollars (\$10) received from the defendant.

XI.

That on the day of the accident to your orator, in this his bill hereinbefore set forth, your orator while sick, injured, in an exhausted condition and affected with nausea, and not in the full possession of his faculties, and while your orator was in said mental and physical condition, a claim agent of the defendant herein, whose name is to your orator unknown, took your orator to the office of the defendant's physician and surgeon, in the town of Great Falls, Montana, whose name is to your orator unknown, and upon examination by said physician, whose name is to your orator unknown as aforesaid, and after an apparent and cursory examination by said physician of the defendant, said physician informed your orator that his injuries were slight and amounted to

nothing more than a nervous shock and a slightly sprained ankle and instep, and that in a day or two, he, your orator, would be entirely recovered, and that he, the claim agent representing the defendant would give your orator the sum of ten dollars (\$10), representing two or three days' pay, that he, your orator, might remain in the town of Great Falls, Montana, for two or three days and rest, and receive treatment if necessary, and that the defendant would hold open his, your orator's, position with said company, and that your orator accepted from the defendant the [6] sum of ten dollars (\$10) that he might so do, and for no other purpose; that at said time while your orator was in the nervous condition and not in the full possession of his faculties as aforesaid, your orator signed under the representation and dictation of the claim agent of the defendant an instrument which said claim agent of the defendant stated was a receipt for the ten dollars (\$10), and also your orator endorsed a voucher for ten dollars (\$10), whereupon said claim agent of the defendant gave your orator the sum of ten dollars (\$10) for the purpose of paying his expenses and his time for two or three days, when he would be able to go back to work as heretofore pleaded.

XII.

. That then and there relying upon the statements of said claim agent and physician, your orator did then and there sign said paper.

XIII.

That your orator did not read said paper, that he was not in such a physical and mental condition that he could read and comprehend the contents

thereof; that he did not have time to read said paper and that he signed said paper relying solely and wholly upon the statements of said claim agent and physician of the defendant, that it was a receipt for ten dollars (\$10) as aforesaid and nothing else, and that he, your orator, would not have signed said paper save and except for the representations as to its contents then and there made to him by the defendant's claim agent, and that said statements were then and there made by the defendant's claim agent to your orator, for the purpose of inducing your orator to sign said paper.

XIV.

That said paper as aforesaid was the only paper signed by your orator on the 10th day of May, 1915, or any time subsequent thereto save and except a voucher aforesaid. [7]

XV.

That if said paper then and there signed by your orator as aforesaid, was the paper set out in the Answer herein and the same paper to which said claim agent procured your orator's signature, your orator's signature thereto was obtained through fraud, misrepresentation and deception as aforesaid, as to the contents of said paper as aforesaid, that your orator did not then nor has he ever at any time executed or authorized to be executed to the defendant corporation or to any other person or persons whomsoever, any release of his claim for damages for injuries to his person sustained as in the complaint herein set forth.

XVI.

That at no time on said 10th day of May, 1915, or

at any time subsequent to the receiving of said injuries, did said claim agent or any other person or persons representing the defendant, ever discuss with your orator the subject of the settlement of his claim for damages for personal injuries as set forth in the Complaint herein, nor had your orator at any time presented a claim for settlement to the defendant or any agent or agents thereof, for the personal injuries heretofore alleged.

XVII.

That your orator is informed and believes, and upon such information alleges the fact to be that the defendant herein has in its possession a certain instrument in writing, in words, letters and figures as follows, to wit:

“GREAT NORTHERN RAILWAY COMPANY,
RELEASE OF DAMAGES.

KNOW ALL MEN BY THESE PRESENTS,
That in consideration of the sum of ten and no/100 dollars to me in hand paid by the Great Northern Railway Company, the receipt whereof is hereby acknowledged, have released, acquitted and discharged, and do, by these presents, release, acquit and discharge said Railway Company, its successors and assigns of and from any and all liability, causes of action, costs, charges, claims or demands of every name and nature, in any manner arising or growing out of, or to arise or grow out of [8] personal injuries received by me (W. J. Reid) at or near Geyser, in the State of Montana, on or about the 10th day of May, 1915, while acting as a cook, I met with an accident whereby I sustained personal injuries; or arising, or to arise out of any and all personal

injuries sustained by me at any time or place while in the employ of said Railway Company prior to the date of these presents.

No promise of future employment has been made to me by said Railway Company as part consideration of this settlement and release, or otherwise.

In witness whereof, I have hereunto set my hand and seal this 10th day of May, A. D. 1915.

W. J. REID. (Seal)

In presence of:

P. B. FOLEY.

W. J. BURTON.”

“VOUCHER.

GREAT NORTHERN RAILWAY COMPANY.

To W. J. Reid, Cook, Dr.

Address, Geyser, Montana.

Please date and sign receipt and return to Assistant Treasurer, St. Paul, Minn.

For and in consideration of any and all claims past, present and prospective against the Great Northern Railway Company arising or to grow out of personal injuries received by me at or near Geyser, Montana, on or about May 10th, 1915. \$10.00

I certify that the above is a true copy of an original account approved by the proper officers, that the same has been examined, found correct, registered and filed in the Accounting Department of the Company.

J. H. BOYD,
Auditor Disbursements.

Treasurer's Voucher made ———, 191——, by
_____.

Received May 10th, 1915, of the Great Northern Railway Co., Ten and no/100 Dollars in full for the above account.

\$10.00. (Sign here) W. J. REID."

Endorsed on the back is the following:

"GREAT NORTHERN RAILWAY COMPANY.

Voucher No. J289. Comptroller's No. 24278.
Month of May, 1915. In favor of W. J. Reid, Cook,
Geyser, Montana.

\$10.00. [9]

Approved for payment.

G. R. MARTIN,
Comptroller.

Paid by draft No. 18845. Drawn by P. B. Foley,
A. C. A., Great Falls, Mont.

Treasurer's Office. Paid May 18, 1915. G. N.
Ry. Co."

Endorsed on the back of the release is the follow-
ing:

"I have read within Release before signing and
fully understand that the sum of ten dollars is in
full settlement of all claim of every kind.

W. J. REID.

Witness:

P. B. FOLEY.

W. J. BURTON."

XVIII.

That by reason of and on account of the physical
and mental condition of your orator at the time here-
inbefore set forth, your orator is unable to state
whether said release is the paper signed by him as

aforesaid, and he has no knowledge thereof, and he is unable to state whether, if he did sign said paper, that said paper is in the same condition as it was when he signed the same, and whether the written and typewritten portions of said release were in said paper at the time he signed the same, or whether other and different matters were therein contained.

XIX.

That at the time hereinbefore set forth, to wit, immediately after the accident and within eight (8) hours of said accident to your orator herein, your orator was not aware that in said accident as aforesaid, he, your orator, had broken the arch of his right foot or had suffered double inguinal hernias or any injury of any kind, character or description, or that he had sustained any other injury of any kind, character or description, or which might cause a broken arch of the right foot or a double inguinal hernias, or which might cause any other disability to your orator's earning power, and that the said injuries, as aforesaid, [10] to your orator were never taken into consideration at the time of signing said instrument by your orator, if the same was so signed, nor by the claim agent or vice-principal of the defendant corporation at said time within the knowledge of your orator, nor by the defendant corporation with the knowledge of your orator herein. .

XX.

That your orator further alleges and says that heretofore he, your orator, instituted an action against the defendant corporation in the District Court of the United States for and within the Eastern District of Washington, Northern Division, for

and on account of his injuries as aforesaid, and by the prayer of his complaint in said action sought to recover of and from the defendant corporation the sum of fifteen thousand dollars (\$15,000) and costs for and on account of his injuries as aforesaid.

XXI.

That after such proceedings were had in said court, the defendant corporation filed an Answer in said cause, in which Answer the execution of the alleged release hereinbefore set forth was alleged as a release from any and all claims of any kind, character or description of your orator against said defendant corporation and as a bar to the prosecution of his, your orator's, said action, to which release your orator interposed a reply, denying the execution thereof, and pleading that said release was obtained from him, your orator, if obtained at all, by fraud and misrepresentation, reference to which complaint, answer and reply are hereby prayed by your orator for fuller particulars as to their contents.

XXII.

That thereafter and prior to the institution of this action your orator tendered to the defendant the sum of eleven dollars (\$11), being the sum of ten dollars (\$10) paid your orator by said defendant, and interest thereon from the date of said [11] payment and up to the time of said tender, at the rate of ten per cent (10%) per annum, which tender was refused by said defendant corporation, who refused to accept said sum of money or any portion thereof, and that your orator has always kept said tender good and willing and ready to pay said amount to

said defendant corporation, and hereby tenders and deposits in the registry of this court for the benefit of said corporation the said sum of eleven dollars (\$11).

XXIII.

That the amount in controversy herein, to wit, the injuries sustained by your orator, as aforesaid, exceeds the sum of two thousand dollars (\$2,000) exclusive of interest and costs.

WHEREFORE, your orator brings this suit to set aside said release and to have the same declared null and void, and prays:

I.

That the said defendant may be compelled to answer all and singular the premises and allegations in this bill, but not under oath, (answer under oath being hereby expressly waived), and that relief be ordered and decreed to your orator as follows:

That the aforesaid release hereinbefore set forth was and is null and void; that the same was executed, if executed at all by the complainant, for and on account of fraud and misrepresentation of the defendant, its servants, agents and employees, and for and on account of the lack of knowledge by complainant and by defendant, its servants, agents and employees, that said accident and injuries broke the arch of the right foot and cause a double inguinal hernias, and that said injuries were permanent, or that complainant's earning power has been permanently destroyed, and for such other and further relief as may be meet and agreeable to equity, and for his costs of this suit.

And your orator further prays that your honors

will grant to your orator a writ of subpoena of the United States of America, [12] issuing out of, and under the seal of this court, and directed to the said Great Northern Railway Company, a corporation, demanding it on a day certain to appear before your Honors in the court aforesaid, and then and there answer this bill, and these premises, and to abide by and perform the further order, decree and direction of this court.

(Signed) STEAKE & NUZUM,
Solicitors and Counsel for Complainant: Address
11-12 Ziegler Block, Spokane, Washington.

State of Washington,
County of Spokane,—ss.

W. J. Reid, being first duly sworn, on oath states that he is the complainant in the above-entitled cause; that he has heard read the foregoing Bill of Complaint; knows the contents thereof, and believes the same to be true.

(Signed) W. J. REID.

Subscribed and sworn to before me this 6th day of July, 1916.

(Signed) HAROLD N. NUZUM,
Notary Public in and for the State of Washington,
Residing at Spokane, Washington.

[Endorsements]: Bill of Complaint. Filed in the U. S. District Court for the Eastern District of Washington. July 7, 1916. W. H. Hare, Clerk. By S. M. Russell, Deputy. [13]

[Title of Court and Cause.]

Answer to Bill in Equity.

Now comes the above-named defendant for its answer to the Bill of Complaint of the above-named plaintiff.

I.

Denies any knowledge or information sufficient upon which to form a belief as to the truth or allegations of paragraph I of the Bill of Complaint herein, and therefore denies the same.

II.

Admits the allegations of paragraph II of said bill.

III.

Admits the allegations of paragraph III of said bill, except that said defendant alleges that at some times and places it is engaged in interstate commerce and at other times and places in intrastate commerce and alleges that it is the owner of the railroad known as the Great Northern Railway.

IV.

Said defendant admits that on the 10th day of May, 1915, the said defendant was engaged in operating a train of outfit cars at Geyser, Montana, but denies that said train was used in the repair of said road, or that it was operated in interstate commerce.

V.

Said defendant admits that upon said day the said plaintiff was employed as a cook in one of said outfit cars, and that while said car was being moved upon

the industry track of said [16] defendant, said car was derailed, and that said plaintiff received some slight injuries at the time of said derailment. Said defendant specifically denies that said derailment occurred upon the main track of said station at Geyser, and specifically denies that the switch point on the switch-track was old, defective or worn or that defendant negligently failed to fasten the switch point of said switch-track or negligently allowed the same to remain partially open or insecure, or that it negligently operated said train on said date at said place.

VI.

Said defendant denies that by reason of said derailment the top of the cook-stove fell upon the plaintiff's foot or that the plaintiff suffered a double inguinal hernia, or a broken arch of his right foot, or a severe wrench of his back or a severe shock to his nervous system, and denies that since said date plaintiff has suffered great and excruciating physical pains or agony on account of any injuries received upon said date, or that he has suffered a semi-paralyzed condition of both legs, or that he does now suffer or in any probability will continue to suffer any pain or agony on account of any injuries received upon said date.

VII.

Said defendant specifically denies that prior to said date said plaintiff was a well man; denies that he has never lost a day's work on account of his health, and denies that he was capable, or was earning from \$75 to \$100 per month and expenses. Said

defendant denies any knowledge or information sufficient upon which to form a belief that upon said date plaintiff was of the age of forty-two years, or had a life expectancy of twenty-six years, and therefore denies the same.

VIII.

Said defendant denies that since said date the said plaintiff has been unable to work or that he has not been able to [17] work for more than a week or two at a time, or that he has not been able to work for a wage not to exceed \$12 per week.

IX.

Said defendant denies that since said injuries the complainant has been in any other state of health than he was before the said injuries, and denies that the said injuries received upon the said accident are or were permanent; denies there will be any difference in his ability due to said injuries than before, to earn his livelihood, or that he has been damaged in the sum of \$15,000 or in any sum by reason of said injuries.

X.

Said defendant denies that plaintiff had to expend or will have to expend the sum of \$150, or any sum, for physicians or for care or medical supplies on account of said injuries.

XI.

Said defendant admits that upon the 10th day of May, 1915, the said plaintiff in company with a claim agent of defendant, went to the office of a physician and surgeon in Great Falls, Montana, and upon examination by said physician of said plain-

tiff, which said examination was a thorough examination, the said physician did find that the said plaintiff had suffered a bruise to his arm and shoulder, and some slight injuries to his ankle, and informed the said plaintiff to that effect, and that thereupon said plaintiff did claim to said defendant that said plaintiff's injuries received by him at the time and place alleged in said complaint, were injuries for which the said defendant was liable; that said claim was denied by said defendant, and through and by subsequent negotiations between said plaintiff and said defendant, a compromise and settlement of said claim was agreed upon and that upon the 10th day of May, 1915, said plaintiff did compromise, adjust and settle all the claims of said plaintiff against said defendant, on account of the injuries to said plaintiff, either as alleged in said [18] complaint or otherwise, and that at said time, in consideration of ten dollars paid by said defendant to said plaintiff, said plaintiff did then and there release, acquit and forever discharge said defendant of and from any and all liability, causes of action, costs, charges, claims or demands of every name and nature, in any manner arising or growing out of, or to arise or grow out of the personal injuries received by the said plaintiff, either as alleged in the third amended complaint in the action referred to in the complaint in this action or otherwise, and did release and discharge said defendant from any and all liability for or on account of the said injuries to the said plaintiff, and in accordance with said compromise, adjustment and settlement,

said defendant did pay to the said plaintiff the sum of ten dollars (\$10), and thereby the cause of action set up in the complaint and in the action referred to in the complaint was compromised, settled and adjusted; that in consideration of said sum of ten dollars (\$10) so paid by said defendant to said plaintiff, said plaintiff did in writing, under seal, release, acquit and forever discharge the said defendant from any and all liability, for or on account of the injuries to the said plaintiff, or from any or all cause or causes of action, charges, costs, claims or demands, of whatever name or nature, in any manner arising or to grow out of said injuries, which release of damages by said plaintiff to said defendant was duly executed and signed by said plaintiff under his seal, in accordance with said compromise and settlement, and which said release was duly delivered by said plaintiff to said defendant.

Further answering said complaint and said paragraph XI thereof, the defendant denies that at the time of said examination plaintiff was sick or was in an exhausted condition or affected with nausea or not in full possession of his faculties; that said examination was an apparent or cursory examination, or that the representations made by the said defendant to the said plaintiff [19] were other than those hereinbefore set forth, or that the said sum of ten dollars (\$10) was accepted by said plaintiff for any other purpose than the release and voucher set forth, or that said release or voucher were executed while the plaintiff was in a nervous condition, or not in full possession of his faculties.

XII.

Said defendant denies that the said release and voucher were signed by the said plaintiff relying upon the statement of the claim agent or physician hereinabove referred to.

XIII.

Said defendant denies that said plaintiff did not read said paper and that he was not in a physical condition that he could read or comprehend the intention thereof, and alleges on the contrary that plaintiff did read the said paper and that he fully understood the contents thereof. Defendant denies that said plaintiff signed said paper relying solely or wholly upon the statements of said claim agent and physician of the defendant, that it was a receipt and nothing else, and said defendant alleges that said claim agent and physician of the defendant made no such statement. Said defendant denies that the said plaintiff would not have signed said paper except for representation as to its contents made to him by the defendant's claim agent, or that the statements alleged to have been in said complaint were made by defendant's claim agent either for the purpose of inducing him to sign said paper, or otherwise.

XIV.

Said defendant specifically denies that the papers referred to in paragraphs XI to XIV, inclusive, in said complaint, were the only papers signed by said plaintiff on the 10th day of May, 1915, or any time subsequent thereto, except the voucher therein referred to, and alleges on the contrary that said

plaintiff did execute an original and duplicate of said release, and an original and duplicate of said voucher and did endorse a draft for [20] the sum of ten dollars (\$10), payable to the order of the said plaintiff and did cash the same, and received the money thereon, which draft was in the sum of ten dollars (\$10), and dated the 10th day of May, 1915.

XV.

Said defendant specifically denies that said release and voucher, or any of the papers signed by the said plaintiff, or the signature thereon of the said plaintiff, were procured through fraud or misrepresentation or deceit as to the contents thereof; alleges that said plaintiff executed and delivered to the said defendant a release of his claim for damages for injuries to his person sustained upon said 10th day of May, 1915.

XVI.

Said defendant alleges upon the said 10th day of May, 1915, that the said plaintiff did present a claim to said defendant for his injuries received upon said 10th day of May, 1915, and that the said plaintiff and said claim agent did discuss settlement of plaintiff's claim for damages for personal injuries received upon said 10th day of May, 1915.

XVII.

Said defendant admits all of the allegations in paragraph XVII of said complaint.

XVIII.

Said defendant denies that the said plaintiff has no knowledge or is unable to state whether the papers referred to in said paragraph XVII of the

complaint are the papers signed by him, said defendant alleges that the said papers are in the same condition as when signed by him, except as to said voucher, the name endorsed on the face thereof being "J. H. Boyd" and upon the back thereof the following: "J289, 24278, May 15, G. R. Martin, Treas., Office, paid May 18, 1915, Great Northern Railway Company, pay First National Bank, St. Paul, or order, express remittance, 14, [21] May 15, 1915,—14, L. E. Katzenbach, L. E. Katzenbach, Treasurer, Great Northern Express Company, First National Bank, May 17, 1915," were not upon the said voucher at the time that the said plaintiff did sign the same.

XIX.

Said defendant admits that said plaintiff did not know, within eight hours of said accident that he had broken the arch of his right foot, or had suffered a double inguinal hernia on account of said accident, and alleges that he did not suffer such injuries, or any injuries other than hereinbefore admitted in this answer. Said defendant alleges that all injuries suffered by said plaintiff upon said day were taken into consideration by the said plaintiff and the said defendant, its agents, servants or employees at the time said release and said other papers were signed.

XX.

Said defendant admits the allegations of paragraph XX of said complaint.

XXI.

Said defendant admits the allegations of paragraph XXI of said complaint.

XXII.

Said defendant admits the tender referred to in paragraph XXII of said complaint and the refusal thereof by said defendant.

XXIII.

Said defendant denies the allegations of paragraph XXIII of said complaint.

XXIV.

Said defendant specifically denies each and every allegation, matter and thing of said complaint, except as hereinbefore admitted.

XXV.

Said defendant denies that plaintiff is entitled to any [22] relief whatsoever, or any part of the relief in said Bill of Complaint demanded, and alleges that said complainant has no standing in this court, or any court of equity.

Said defendant prays in all things the same benefit and advantages of this its answer as if it pleaded or demurred to said Bill of Complaint.

Defendant denies all and all manner of unlawful acts whatsoever, whereof it is in any wise by the said Bill of Complaint charged; all of which matters and things this defendant is ready and willing to prove as this Honorable Court shall direct, and prays to be hence dismissed with its reasonable costs and charges in this behalf most wrongfully sustained.

(Signed) GREAT NORTHERN RAIL-
WAY COMPANY.

By CHARLES S. ALBERT and
THOMAS BALMER,

Its Solicitors and Counsel.

State of Washington,
County of Spokane,—ss.

Charles S. Albert, being duly sworn, on oath says: That he is one of the attorneys for the defendant, Great Northern Railway Company, in the above-entitled case; that he has read the foregoing answer; knows the contents thereof; and he believes the same to be true.

That defendant is a foreign corporation, is not within said county, is incapable of making the affidavit of verification herein, is absent from said county, and has no officer within the same authorized to make the verification, other than its attorneys, one of whom is affiant, who is duly authorized so to do and that the reason for this affiant making this verification is hereinbefore immediately set forth.

(Signed) CHARLES S. ALBERT.

Subscribed and sworn to before me this 24th day of July, [23] 1916.

[Seal] (Signed) HERBERT H. SIELER,
Notary Public in and for the State of Washington,
Residing at Spokane, Wash.

State of Washington,
County of Spokane,—ss.

Herbert H. Sieler, being first duly sworn, on oath says that he is now, and during all the times mentioned herein has been, over the age of 21 years and competent to be a witness in the above-entitled action; that he is not a party to the above-entitled action; that upon the 29th day of July, 1916, at the hour of 1:05 o'clock in the afternoon, he served the

within answer upon Steake & Nuzum, the attorneys for the plaintiff herein, personally, by handing to and leaving with Gyda Olsen, a true and correct copy thereof, at the office of the said Steake & Nuzum, at No. 11 Ziegler Block, City of Spokane, State of Washington; that at the time of said service of said answer the said Steake & Nuzum, attorneys, were then and there absent therefrom, and the said Gyda Olsen was then and there a person of suitable age and discretion, in charge of said office.

And this affiant does further certify that the copy of the answer so served was a true and correct copy of the original answer hereto attached.

(Signed) HERBERT H. SIELER.

Subscribed and sworn to before me this 29th day of July, 1916.

[Seal]

(Signed) H. V. DAVIS,

Notary Public in and for the State of Washington,
Residing at Spokane, Wash.

[Endorsements]: Answer to Bill in Equity. Filed in the U. S. District Court for the Eastern District of Washington, July 29, 1916. W. H. Hare, Clerk. By S. M. Russell, Deputy. [24]

[Title of Court and Cause.]

Statement of Evidence and Bill of Exceptions.

BE IT REMEMBERED, that on the 26th day of September, 1916, the above-entitled cause came on for trial before the above-entitled court, and the Court having heard the evidence, and the cause having been submitted to the above-entitled court for

final decision and judgment; Hon. Frank H. Rudkin presided over said court; plaintiff appeared by A. H. Steake and Harold N. Nuzum, his solicitors, and the defendant appeared by Charles S. Albert and Thomas Balmer, its solicitors, and the following proceedings were had and testimony taken:

Testimony of W. J. Reid, for Plaintiff.

W. J. REID, being called as a witness in his own behalf and being first duly sworn, testified as follows:

I am the plaintiff; am married. My family consists of a wife and two children. I have lived in Spokane on and off for the last twelve years, about eight years altogether in Spokane. I was employed by the Great Northern Railway Company as a cook some time the first of April, 1915, by Mr. McElroy, superintendent [25] of boarding cars. I was under his supervision. I was shipped to Great Falls and worked all the way on the Butte Division to Geyser and Basin. On the 10th of May, 1915, I was employed at Geyser as cook on the boarding car of a work train. I was injured on the 10th of May, 1915.

Q. State to the Court your injury and the cause of it.

Mr. ALBERT.—A release of all personal injuries is pleaded and attempt is made to set it aside upon the ground of fraud and misrepresentation; also an attempt to plead a mistake. It is our contention that under the general form of the release covering all personal injuries that the only evidence admissible relating to the fraud is evidence which goes to

(Testimony of W. J. Reid.)

the misrepresentation of fraud in the procurement of the release, and not as to the extent of the injuries, and that there cannot be any showing or claim made that there was not included in the release all of the injuries which this man suffered, either disclosed or undisclosed, and that the statement which this witness is asked to make with reference to any injury which he may have suffered, which are not specifically mentioned in the release, are statements which tend to contradict and vary by parole the terms of a valid written instrument, and are immaterial and not admissible under the pleadings.

Whereupon the objection of the defendant was overruled, to which ruling the defendant duly excepted, which exception is allowed.

A. About nine o'clock that day, half-past nine, along there, I was cooking my dinner for the men and the train crew came along and hitched onto the car and took it out. In putting it back on the switch it came back with an awful speed. It ran off the next three cars before it got stopped. The [26] trucks run off the rails, and practically mashed the biggest part of the dishes. The top of the stove fell across my foot, and it threw me up bodily against the sink, which was near the side of the car, and it hurt me. I got hurt on my foot, and I was shaken up completely, my nerves,—nervous shock, and I have been sick practically ever since. Worked a little off and on.

I have always cooked, ever since I was fourteen years old. I worked all the way from \$125 to \$60

(Testimony of W. J. Reid.)

a month. I was receiving from the Great Northern \$60. I was to work steady. Since I have been injured I have been able to work just by spells. Just when I really had to make a few dollars to make a living. After I was injured at Geyser, I went to Great Falls. I was met at the depot by two men. I don't know who they were. They took me to the doctor's office in an automobile. Examined my foot, bound it up and told me I was badly shaken up and said, "You will be all right to work to-morrow, if necessary." Just examined my foot, that was all.

I met Mr. McElroy, superintendent, at the depot.

Q. State if you remember anything that occurred between the claim agents and Mr. McElroy at that time. State what the conversation was.

Mr. ALBERT.—That is objected to on the same objections which I made as to the character of the evidence seeking to avoid the release, as immaterial and incompetent.

Which objection was overruled, to which ruling defendant duly excepted, which exception is allowed.

A. Mr. McElroy says: "Can I speak to the man"? The claim agent says "Who are you"? something like that.

I don't recall what McElroy said. They took me away. I had some talk with McElroy. I went to the office of the doctor, and after the doctor examined me the claim agent took me right up to his office.

He asked me to sign some papers. I don't know what they was. I was too confused. I can't remember one thing I signed, [27] or anything.

(Testimony of W. J. Reid.)

Q. State what he said to you.

A. Why, he said it was necessary to send these back to St. Paul. That is what he said to me.

Q. Did he offer you any money?

A. No, he said, "You better take ten dollars for to get some liniment," and something like that,— "ten dollars to get some liniment to rub on my feet."

Q. Did he say anything to you about your working or anything?

A. Yes, he did; said I could just stay around town two days and go back to work whenever I wanted to.

I have stated everything that the doctor told me about my condition then.

Q. In what condition had your health been before you were injured?

A. Well, I would say,—I was in good condition, holding big jobs, weighed all the way from 130 to 135 and once I weighed,—about 134 is what I generally weighed. That was a couple of months before I was injured. When I was injured I suppose I weighed about 130 to 134 pounds. Since my injury I have been sick all the time. I weighed yesterday 113½. I was examined by the Great Northern doctors, and by Dr. Downs. I had been examined by Dr. Downs with Dr. Gallagher. I believed the statements made to me in regard to my condition by the doctor. This was on the same day I was injured.

Q. When did you first know, Mr. Reid, that you had a double hernia?

A. I don't know now. The next day,—I didn't know what it was. I discovered something down

(Testimony of W. J. Reid.)

there where it hurt. I had a very small rupture before on the right side, about the size of a marble. I had worn an elastic truss.

Q. Had you ever been bothered with it?

A. Never, part of the time I would leave it in bed, wouldn't use it. When I went from Geyser to Great Falls my foot was swollen up, so it hurt me, and I cut my shoe right up there. It swelled up a bit, bandaged it up. I went back to work that same day, because the doctor told me there was nothing the matter with me.

Q. Did he say you were injured?

A. Yes, sir. [28] I worked until I couldn't walk, about five weeks; then I went to Great Falls. The paper that I signed in Great Falls, I just looked over it, I can't read very good, and I just signed that and they said it was written; they had to go to St. Paul or some place. They didn't read it to me. When I was in the office of the claim agent at that time, I felt weak, nervous, pained. I felt bad down there when I got hurt. It is 40 miles from Geyser to Great Falls. I was on a train in about an hour after the accident, somewhere about that. I laid down in a seat going down and reached Great Falls two or three hours after the accident. I was back at Geyser about half-past four. I left Geyser, going down in the morning, just before dinner, about ten o'clock. The whole thing transpired in about six hours, from in the morning to four-thirty.

Cross-examination.

Whereupon the witness was cross-examined by

(Testimony of W. J. Reid.)

Mr. Albert and testified as follows:

At the time of the accident I was about 38. Never worked for the Great Northern before. I worked at Geyser before this accident and afterwards. We moved from Geyser the third or second day after the accident to near Judith Gap near Buffalo. I couldn't say how long I worked at Buffalo. I don't remember the stations. We were moved so often. Went to Hobson and Moccasin and worked at Armington one day. I worked on the morning of the day I got hurt up to the time of the accident. I came back in the afternoon and worked that afternoon. I worked continuously from then up to the second of July,—continuously all along. I was the only cook at that point. I not only worked for the Great Northern up to the second of July, but I worked at various places and times since, a week or two whenever my health [29] would permit. I am working now. Have been working a week here at the French Cafe. Previous to that time I worked at Wallace a week. I worked at Union, Idaho, I don't remember,—about two or three weeks. These are all after I was injured. I worked about three weeks at Union, Idaho. I worked in October and November, 1915, some time. I didn't keep track. Part of the time I laid off and went back again. I worked in November two weeks. I don't remember verifying the complaint in the law action stating how long I worked. I remember swearing that I worked along four weeks at Union, Idaho. I think it was three weeks in October and November, 1915,

(Testimony of W. J. Reid.)

was all I worked. I worked again for the Great Northern Railway Company at Wilson Creek eight days. I worked also at the Baltimore Cafe and German Bakery in this city. I worked seven or eight weeks at the Baltimore Cafe. I worked for the German Bakery about three weeks. I don't suppose I worked over three months and a half or four months altogether.

I had had a hernia before this accident for three years. That was the hernia on the right side. That was the worst hernia that I have got. I got it in North Yakima. I had two pieces of ice up in an ice-box; I threw them up in the ice-box and it fell down and I caught it in my hand. That strained me and I had a rupture. I had been wearing a truss about two years before I got hurt. I felt sick to the stomach that day, more sick I guess than I did pain. The pain didn't start until the next day, and I wondered what it was. I didn't have any difficulty with my feet before the time of the accident.

Q. You didn't cut your shoes or do anything of that sort before this accident.

A. No, sir; never had anything only an ingrowing toe-nail, and had that a year ago. I didn't complain before the accident of my feet swelling, and I [30] never cut my shoe.

Q. But you say you had sore feet before that time.

A. Yes, sir; I say I cut it right there. There was an ingrowing toe-nail.

Q. You did cut your shoe then before this accident? A. No, sir, on the side a little bit.

(Testimony of W. J. Reid.)

Q. And that was done only for the purpose of protecting this ingrowing toe-nail?

A. Yes. I never had rheumatism in my life. At the time the accident happened I was washing dishes. The men had already had their breakfast and gone. I was standing at the sink washing dishes and the car went off the track. It did not turn over—pretty near it. The first two trucks went off the track. The other trucks remained on the tracks. The majority of the dishes were broken. They hit the top of the ceiling. I was standing between the stove and the sink. A big heavy stovelid, weighing about ten pounds, is what hit my foot. The rest of the stove didn't hit my foot. That hit my right foot. My left foot was hit by so many things that fell on me from over the high shelves, I don't know what hit me. The lid bruised my foot. There wasn't anything above heavy enough to do the work. I was hit on the arm and on the foot. I fell against the side of the sink. I was facing it. I was thrown up against the sink with my stomach. I went right forward. As soon as the confusion was over and the car steadied I rushed out. I got out myself. I went to Great Falls about an hour after that. I went to my room to get the things. I went to the station agent first. He came over and looked at the car. I didn't clear up around there myself. I didn't prepare the dinner before I went to Great Falls. They sent two men to prepare the dinner. I never had anything to do with the dinner. Couldn't wash a dish. I went to Great Falls. I

(Testimony of W. J. Reid.)

was met there by some men.

Q. I wish you would look around here and see if you see the men that met you there at the station.

A. Mr. McElroy is the only one I can recollect. [31] I saw a certain man up in the claim department that day. The man sitting back there. I saw him at the claim department. I did not see him at the station. Mr. McElroy is the only one here whom I saw at the station that day. I don't remember what the doctor looked like. I was shook up so bad I don't remember. I remember telling him that if there was anything the matter with me I wanted to go to the hospital or get something done, and he said there was nothing the matter. I remember the conversation Mr. McElroy had, but I don't remember the appearance of anybody that was around there. I am able to read and write very little. I can write my own name. I can write other things as a matter of fact. It is my idea that I suffered injuries that day from this accident, and that I have been suffering ever since, and never felt the same. Have never felt well since is my idea. I wish to swear to that as a fact.

Whereupon the following proceedings were had:

Certain papers were marked Defendant's Exhibits 1, 2 and 3 for identification.

That is my signature on the back of exhibit number 1. I remember getting ten dollars. He told me to buy liniment with. I don't know what I signed. I do know that that is my signature and that I got my money on that. That is my signature on the

(Testimony of W. J. Reid.)

bottom of Defendant's Exhibit Number 3. It is my handwriting. I don't remember signing it. That is my signature on Defendant's Exhibit 2. I never read that paper and I don't know why I signed it. I signed, I guess, pretty near everything that was put in front of me. On the back of Defendant's Exhibit 2 that is in my handwriting. The claim agent dictated that all right enough. He told me the words to write on there. It is my handwriting and I signed it. I know that "I have read the [32] within release before signing and fully understand that the sum of ten dollars is for settlement of all claims of every kind," is in my handwriting. I don't recollect signing it. I don't dispute my own handwriting.

Whereupon the defendant offered exhibits 1, 2 and 3 in evidence, and no objection being made by the plaintiff, the exhibits were admitted.

Whereupon Defendant's Exhibit Four, two pages, one and two, was marked Defendant's Exhibit No. 4 for identification.

That is in my handwriting. I wrote and sent that letter to the claim agent. I remember the letter now. It is in my handwriting.

Q. At that time you knew that you had settled this suit, didn't you?

A. Not until I went back that afternoon. They told me I had settled it. At the time I wrote this letter I knew that I had settled it. John Gray was the man told me I had settled after I went back that night. He was a man that was working in the gang.

(Testimony of W. J. Reid.)

He asked me if I signed a paper and I says, "Yes, I signed everything that was put in front of me."

Q. What did you mean when you stated in this letter: "I am now well and am very badly in need of work."

A. Now, this letter was in—I mind writing the letter all right. It was some time about Christmas. I was out of money and I wanted to get to work and the Great Northern wouldn't give me work.

The COURT.—Is it dated?

Mr. ALBERT.—The date of the receipt at our office is October 23d; evidently written on the 22d.

WITNESS.—It was the day I went to work at the Baltimore. I got the job the same day.

The COURT.—This date is October 22d.

WITNESS.—It was way on later than that. It was in the middle of the winter. [33] I went to work on the same day this letter was written, some place, I don't know where it was.

Before the accident I used to do all the lifting myself. I was doing the cooking alone at that time. I was cooking for ten or twelve men there,—some days fourteen. Probably once fifteen. I had to handle flour and potatoes and sides of beef and all that sort of thing. After the accident I had a man who helped me. His name was Twohy. The fact is I put all the work on the car man I could. He kicked. The hernia didn't bother me before the accident.

Q. At the time that you felt this pain right after you got this hernia before, it didn't bother you?

(Testimony of W. J. Reid.)

A. Not particularly; it was only a small one; it didn't bother me much. Once in a while if I would do any heavy lifting I would put on a truss. I don't remember whether the office of the claim agent was on the ground floor or upstairs. The claim agent was with me all the time; just took me where he wanted to take me. My foot afterwards swelled up, got big. It swells yet. I guess it is swollen now. Whenever I work hard ever since I got hurt it swells. I thought possibly that it was rheumatism at first. I didn't ask the doctor about it. Just went on about the Great Northern work. He told me it was just a sprain; would be all right.

Q. I say, when was it that you first claimed to any officer of the company the fact that you had gotten this rupture?

A. I wrote to Mr. McElroy, superintendent of boarding cars and asked him to relieve me.

Q. Never mind what you wrote. I want to know when you first made the claim.

Mr. NUZUM.—I object to that.

The COURT.—Simply asked him when it was. He didn't ask him what the claim was.

A. Along in June. I was still on the line.

Whereupon defendant offered in evidence exhibit 4, to which offer the plaintiff made no objection, and said Defendant's [34] Exhibit 4 was received in evidence.

Redirect Examination.

Upon redirect examination by Mr. Nuzum, he testified as follows:

(Testimony of W. J. Reid.)

I left off work at the Baltimore Cafe because the boss told me I wasn't able to do the work because I was too stiffened up. I was second cook. I was receiving \$12 a week.

Q. What was your object, Mr. Reid in stating in this letter that you had recovered?

Mr. ALBERT.—That is objected to as incompetent. The witness has stated by the letter that he was well and wanted to go to work.

The COURT.—He can explain his reason for making the statement, if he had any. .

Whereupon the Court overruled the objection of the defendant, to which ruling the defendant excepted, which exception is allowed.

A. In the first place I knew I couldn't get a job with the Great Northern unless I was well and another thing I was broke and the children had no money and I had to do something. That is the reason I wrote the letter.

There was no one else in the car with me at the time of the accident.

Recross-examination.

Upon recross-examination by Mr. Albert he testified as follows:

Q. Will you please give me the names of those places where you were earning one hundred or one hundred and twenty-five dollars a month, or whatever they were?

One of them was a mine up in Mace, Idaho. I was getting four dollars a day. I worked a day and a half. I got sick. This was subsequent to the ac-

(Testimony of W. J. Reid.)

eident. It was at the Polson Log Company at Hoquiam I got one hundred dollars a month. At Jackson & McDougall at Buckley I got ninety dollars. I worked [35] for one hundred dollars a month for the Elk River Logging Company at Fernie, B. C. Then for Mr. Thornton, eighty dollars a month at Tyson Creek, Potlatch eighty dollars a month,—the Potlatch Lumber Company.

Testimony of Harry Wells, for Plaintiff.

Thereupon HARRY WELLS was called as a witness on behalf of the plaintiff, and being first duly sworn, testified as follows:

I am a restaurant cook now working at Nimm's Lunch. I have known Mr. Reid about four years. I was rooming with him; worked for him up in Glacier Park in the United States Reclamation Service. Worked for Mr. Savidge. That was about three years ago. He was rooming with me in April, 1915 at the time he left for Montana. His family was then out of town. I had been rooming with him for about six weeks.

Q. During that time did you have occasion to notice whether or not he had had a rupture?

A. He had a rupture on his right side; not very big at that time; about the size of your small finger.

He wore a kind of a rubber truss and put it on part of the time; wasn't wearing it very much; was laying around the room. He was getting \$85 a month up there in the Reclamation Service. Mr. Reid's health was good. He didn't have any trouble

(Testimony of Harry Wells.)

at all doing his work. He weighed about 136 to 138 pounds. This was when he was in the Reclamation Service about three years ago. I thought his physical condition was fine then.

I saw Mr. Reid when he got back from Montana. His condition was very poorly. He was just walking along when I saw him. I think he just came in the night before; I happened to see him in the morning going to work.

Cross-examination.

Whereupon, upon cross-examination by Mr. Albert he testified [36] as follows:

At the time I was working at Savidge's was three years ago, and at that time he had a rupture about the size of your little finger. That was when it was protruding.

Upon redirect examination he testified as follows:

At the time I resided with him he didn't complain of any trouble with his feet.

Testimony of George T. McElroy, for Plaintiff.

Thereupon GEORGE T. McELROY was called as a witness on behalf of the plaintiff, and being first duly sworn, testified as follows:

On the 10th of May, 1915, I was superintendent of boarding cars for the Great Northern. I had been with them in that capacity for about a year and a half. I am not now employed by them. I saw Mr. Reid along in the spring. I cannot recollect the day. It was in 1915 at the commissary at Hill-yard. He made an application for a position as a

(Testimony of George T. McElroy.)

cook. He was in there a number of times. The first time he came there I had no position for him so I instructed the chief clerk to take his address and call him in case he needed a cook, but he called in there a number of times before we had a place for him. I shipped him to Montana. The next time I saw him was as I got off the train at Great Falls. I saw him on the platform coming up with two gentlemen. That was the day of the injury. I didn't know them. I never had any conversation or connection with them after that.

Q. State what conversation took place between these gentlemen, these claim agents.

Mr. ALBERT.—Objected to as immaterial, not binding upon the defendants, irrelevant, not competent, pure hearsay.

Whereupon the Court overruled the objection of the defendant, to which ruling the defendant duly excepted, which [37] exception is allowed.

A. Why, I started to go up to speak to Mr. Reid and the old gentleman stepped between us. I wanted to ask him what the trouble was because I saw he was hurt, looked bad and his shoe was cut up there and he seemed in pain. I knew he had only been there somewhere about thirty days or a month and I recognized him and I wanted to see what the trouble was and the gentleman objected to my talking to him. He asked me who I was and I told him who I was. "Oh," he says, "That is different," he says, "You can talk with him, but I thought you were a

(Testimony of George T. McElroy.)

lawyer trying to get a case." I says, "No, I am not a lawyer."

The following day or some time during the week I went down there. The car looked all right when I got there, except the dishes were all broken and we had to ship them a whole lot of dishes from Hillyard. The stove was repaired, a heavy plate that was on top. I saw Mr. Reid when he came in from Great Falls. I don't remember when it was,—at Hillyard. He was walking with a cane and limping badly, and looked bad and I advised him to go and take a rest.

Cross-examination.

Whereupon, upon cross-examination by Mr. Albert, he testified as follows:

I am employed no where at the present. I am working at my profession, optician. I haven't been employed for some time,—since the 2d of July this year. I was dismissed from the service of the Great Northern Railway Company on September 15th, 1915. I am now threatening to sue the company or its officers. When I saw him at Great Falls that day he was limping. They were helping him along, one on each side.

Testimony of W. Cotton, for Plaintiff.

Whereupon W. COTTON, was called as a witness in behalf of the plaintiff, and being first duly sworn, testified as follows:

I am running the Red Star Employment Office. Before [38] that I was working with J. H. Travis in the Red Cross Employment office about twelve

(Testimony of W. Cotton.)

years. I first met Mr. Reid about eight or ten years ago as a cook. I had occasion to ship him out on jobs. The last time I shipped him out was about three years ago. Going wages at that time were from seventy-five to one hundred dollars a month. He was in good health at that time. Able to hold down a position. I should judge he weighed around about 135.

Cross-examination.

Whereupon, upon cross-examination by Mr. Albert he testified as follows:

Three years ago we were shipping out carloads of men every day. I shipped Reid out a couple of times a year. This Red Cross Employment Agency has no connection with the Red Cross Association.

Testimony of Dr. George A. Downs, for Plaintiff.

Whereupon Dr. GEORGE A. DOWNS was called as a witness in behalf of the plaintiff, and being first duly sworn, testified as follows:

Mr. ALBERT.—I will admit his qualifications.

The first time I saw Mr. Reid was in my office on February 26th, 1916. Dr. Gallagher and myself were present.

Q. State to Judge Rudkin what you found at that time in your examination.

Mr. ALBERT.—That is objected to as a statement of conditions nearly a year after the accident, not within the issues; any injury which he may have found at that time is not within the issues. The release which has already been admitted in evidence

(Testimony of Dr. George A. Downs.)

is a general release, covering all injuries, whether they were discovered at that time or not; that there is no proper pleading of mistake in the issues; that the testimony [39] of the doctor as applied to the injuries which he discovered afterwards is immaterial and tends to contradict and vary the terms of a valid written instrument; that the injuries are not connected with the accident.

Whereupon the Court overruled the objection of the defendant, to which ruling defendant excepted, which exception is allowed.

A. I found Mr. Reid suffering from a right and left inguinal hernia; found him very poorly nourished, in a very nervous condition and also found him suffering with a slight swelling in the right foot, and also a flat foot on the right foot. The hernia on the right side was the larger one. The one on the left was not so large. The hernia on the right extended down into the scrotum, making a swelling here larger than your fist. The one on the left would be about the size of a walnut. The arch of his foot was flattened out and broken down somewhat. The right foot at that time was swollen and a little bit larger around the ankle than the other foot. Yesterday when he was examined by the Great Northern physicians he weighed 116½ pounds with his clothes on, 113 pounds nude.

Cross-examination.

Whereupon, upon cross-examination by Mr. Albert he testified as follows:

I examined his left foot in February and yester-

(Testimony of Dr. George A. Downs.)

day. I found his left foot flat-footed, but not as flat as the right, perhaps. I found that flat-footed condition which existed with reference to the right foot generally prevailed with reference to the other foot; that is to say, that the arch had become broken on the left foot and it had broken on the right, with this exception I didn't measure the circumference around the instep yesterday. That I did do in February. In [40] February the right foot was smaller; the circumference around the instep was larger than the left, but yesterday I found both of them were broken. In February I found around the ankle and over the instep along the malleolii, the right one was five-eighths of an inch larger than the left.

Whereupon the following proceedings were had:

Mr. ALBERT.—I will admit that Dr. Gallagher will testify the same as Dr. Downs.

Mr. NUZUM.—Very well, that is all.

Whereupon the plaintiff rested.

Whereupon the solicitor for the defendant introduced the following testimony.

DEFENDANT'S TESTIMONY.

Testimony of Dr. A. F. Longeway, for Defendant.

Dr. A. F. LONGEWAY, a witness produced by the defendant, being first duly sworn, testified as follows:

I am a physician and surgeon and am regularly employed in connection with cases of the Great Northern Railway Company arising in the Great

(Testimony of Dr. A. F. Longeway.)

Falls District. I am on a salary. I have been a practicing physician and surgeon for thirty years and am duly licensed to practice in Montana. Have been in active practice since 1886. I remember examining W. J. Reid in May, 1915, the same man who is here in the courtroom.

Mr. Reid was brought to my office one day in May and he said he was suffering from an injury to the foot. In making out a report I found that the cook-car in which he was working had been derailed and he was injured by having a stove lid hit his right foot. He also said he had a bruise about the shoulder and about the arm. I examined his foot and found that it was injured and bruised and the ankle slightly sprained. He was walking on it, walked on it to [41] the office. I asked him about his arm and he said that didn't amount to anything. I asked him to take off his coat and he said that didn't amount to anything, his injuries were not bad and he wouldn't take off his coat and let me examine it. He said that he would be all right; he was just bruised about the right arm and shoulder. Consequently he didn't take off his coat and I didn't examine his arm. He said it didn't amount to anything and would be all right. I bandaged his foot and told him to stay around two or three days and let me watch him. "No," he said, "It is all right," He wanted to get right back to work and he left my office and that was the last I ever saw of him. His right foot then was practically the same as it is now, except it was more swollen around the ankle at that

(Testimony of Dr. A. F. Longeway.)

time than it is now. He had a pretty flat foot. He told me that he was a cook and it wasn't absolutely flat. At that time he was not a well nourished man. probably was a little heavier than he is now. He was an undersized man, and not in robust health by any means at that time. He didn't at that time complain to me about any hernia, or any other injury than these that I have testified to. He only complained of the injury to his foot and shoulder. Mr. Burton and my stenographer were present in the office at the time I made this examination. I should judge he was in not over ten or fifteen minutes. I didn't make any statement to him that he could go right back to work, that his injuries were slight.

I asked the man to stay around two or three days where I could take care or look after him, and he said "no," that his injury didn't amount to anything and he wanted to go right back to work. I told him I thought he would be all right. That was my opinion, that he would be all right very shortly, although I thought he better stay around there perhaps two or [42] three days to see if this ankle swelled up any more. I believed he would be all right in a few days, or I wouldn't have told him that.

Cross-examination.

Whereupon, upon cross-examination by Mr. Nuzum he testified as follows:

When I examined Mr. Reid I examined his ankle and wanted to examine his shoulder, and he said it didn't amount to anything and wouldn't take off his coat. I didn't take off his trousers. He was an

(Testimony of Dr. A. F. Longeway.)

under-weight man. I wouldn't guess at his weight. Possibly he was heavier then than he is now. Mr. Burton is the claim agent of the Great Northern. He is the man who brought him into the office at that time. I advised him to stay around two or three days and let me watch him, and he made the remark about his injury not amounting to anything and he wanted to get back to work. Didn't complain to me about any pains in his abdomen. Didn't tell me that he had had any hernia. Didn't say anything about his abdomen at all.

Redirect Examination.

Whereupon, upon redirect examination by Mr. Albert he testified:

He didn't make any complaint of any injury excepting his ankle and shoulder. I didn't have any talk with him about settlement. Never mentioned settlement to him. When Mr. Reid was in my office he appeared to me to be perfectly rational. He spoke very freely, made out the report and answered all questions. I could see nothing irrational. He seemed to understand the conversation and what he was doing. I didn't notice he stuttered. [43]

Testimony of W. J. Burton, for Defendant.

Whereupon W. J. BURTON was called as a witness on behalf of the defendant, and being first duly sworn, testified as follows:

I live in Great Falls, Montana, and am traveling claim agent for the Great Northern Railway Company, and have been for about four years. Have

(Testimony of W. J. Burton.)

been stationed at Great Falls a little over two years. Generally my duties are to investigate accidents and claims and settle them. I know Mr. Reid since the day he was injured, about the 10th of May, 1915. The first time I saw Mr. Reid that day he came to our office in the Codd Building shortly after noon, about one o'clock. I had never seen him before. I didn't see him at the station or bring him up in an automobile or anything of that kind. He came to our office. The claim agents located at Great Falls are P. B. Foley and myself. We had a stenographer but he wasn't in at that time. He was out on the road some place. There are no other claim agents who were employed at Great Falls or otherwise who were in Great Falls that day.

Shortly before the arrival of train No. 237, which was due at Great Falls at that time about 1:30, the superintendent's office called up and said that one of the cooks in the outfit cars at Glacier had been injured and he said he was coming to Great Falls on 237. Mr. Foley asked me to go to the depot and meet him and when the train was due I went down to the depot and looked around when the passengers got off and was unable to find the man that was supposed to have been injured. I didn't have his name at that time. I looked the passengers over as they got off the train and I didn't see anybody that appeared to be crippled in any way; and after I [44] made sure that all the passengers were off the train and I couldn't find him I returned to the office. I never saw Mr. McElroy in my life until to-day.

(Testimony of W. J. Burton.)

I had no conversation with him at all. Mr. Foley was not at the station at that time. I was there alone. I didn't take Mr. Reid up in a machine from the station. I never saw him until he came to the office himself. He was alone. The office is on the second floor, two blocks from the depot. There is an elevator in the building.

Just after that this man came in and I was in the stenographer's room and he told me who he was and I asked him how badly he was injured and he said he didn't think it amounted to much, although he wanted to see the doctor, so Mr. Foley requested that I take him up to Dr. Longeway's office, which I did. In leaving the office we went down to the elevator and rang for it and he didn't answer, so we walked down the steps and out into the street and then about half a block and then continued up Center Avenue a distance of a block and up to Dr. Longeway's office. We walked up two flights of stairs to Dr. Longeway's office.

We waited a few minutes in the waiting-room and Dr. Longeway came out of his office and I told him that Mr. Reid had been slightly injured and wanted him to look at his foot. He said he thought that his ankle was sprained. Dr. Longeway asked Mr. Reid to take off his shoe. He didn't have any stockings; had a cloth wrapped around it. He had on rather a heavy pair of shoes and they were cut full of slits, both of them—that is the way it was cut, from the top here clean through to the toe, down to the sole, three slits in each shoe and a slit on either side, the

(Testimony of W. J. Burton.)

left one—that was the one that he said was not injured. The left one was slit open [45] as well as the right. He had no socks on but had some white rags or cloths around his feet.

Dr. Longeway says, "Well, what seems to be the trouble?" He says, "Well, my ankle is hurt, I think." He said, "Well, take off your shoe." And the doctor looked at his ankle and twisted it around and said, it is slightly swollen and he examined it very carefully and wiggled it all around. I remember that; and he put some strips, some kind of blue strips on it, surgeon's tape. Went down in under the foot and up both sides and then around. And he asked him if he was injured any place else and he said he had a little bruise on his arm. The doctor says, "Take your coat off and let's look at it." "No," he says, "It isn't very bad, it don't amount to anything." I says to him, "Let me look at it." He says, "No, no," and he refused to take his coat off and then I spoke up and said, "have you any other injury?" and he said, "No, just shook up a little," he says, "I was knocked down in the car." I says, "Well, you are sure you haven't any other injuries?" He says, "No, none at all only that ankle and he says, "that pains because my feet has been crippled for a long time," he says, "and it hurts me." He wasn't at that time nauseated, or vomiting or anything of that kind while he was there. He was using tobacco of some kind. Got up to spit.

His general appearance seemed to be all right. He was very sociable, talked very freely, explained

(Testimony of W. J. Burton.)

the accident, gave me the time and just what he was doing and talked a great deal all the way from the office to the doctor's office, and he also talked at the time the doctor was taking care of his foot. The doctor asked him to stay around a day or two until the swelling went down and he said, "No, it [46] isn't necessary; it don't amount to anything," and he wouldn't stay.

After leaving the doctor's office we left the building together and started down the street going from there to Central Avenue and then down Central Avenue; as we were going down he told me that he had been troubled a great deal in the past with rheumatism; that both of his feet and legs would swell at times and he said that was due to working around the water, kitchens all the time and he said he had been reading in the papers about balsam salve of some kind that was highly recommended for rheumatism and he asked me what I thought about it. I told him I didn't know much about it, but it might be good; I didn't know anything about it and he said he wanted to get some and he asked me if I would take him to the place where he could get it. So I took him over to the Great Falls Drug Company and Mr. Watson is one of the owners and I walked up to Mr. Watson and told him what the man wanted. So he bought two tubes of it. It comes in little tubes about that long. He paid twenty-five cents a piece for them and said he was going to take them back with him to rub on his legs; said there was oil in it and it would keep them dry. We walked

(Testimony of W. J. Burton.)

around Central Avenue,—walked down the street and then crossed over and went over to our office. When we got to the corner of Central Avenue and Second Street North—the depot is right off down Central Avenue a block—we turned to the right and he started on down and I says, “You better come up to the office now and see Mr. Foley before you go back.” So he said, “All right,” and he came up to the office and we went into the office and went upstairs into the office and I turned [47] him over to Mr. Foley.

When we entered the office Mr. Foley was talking to somebody and in the matter of a minute or two he came out and asked Mr. Reid about his foot and he says, “It don’t amount to anything; little bruise on it is all,” and he just pulled his trousers up that way and showed where it had been bandaged, and laughed. He said they just got through breakfast and were on a side track at Glacier and a freight engine came in to pick up some cars that were behind the outfit car, and in order to get them they had to pull the outfit car and these other cars out and set the cars out, set them on the main line, and they were setting them back on the side track. He said when they were shoving back in the car was derailed and he said, “I was standing by the table and when it got off the track,” he said, “and derailed” it seemed he went to catch himself and he turned his ankle. That is what he told me and what he told Mr. Foley.

He got a pencil and a piece of paper and described it and Mr. Foley says, “Well, what do you think we

(Testimony of W. J. Burton.)

ought to do for you on it?" "Well," he says, "I don't suppose you have to do much of anything; I am just losing a little time; going right back on this train. You ought to pay me for my time to-day; I have lost a day," and Foley asked him what he was making and he said sixty dollars a month, and Mr. Foley then asked him if he was going to stay in town over night; if he was, he could get him a place at the hotel. He said no, he wanted to get right back. He asked him again what he thought we ought to do for him in the way of a settlement. "Oh," he said, he didn't know; thought he ought to get a couple of days' time out of it, and Mr. Foley asked him if he thought ten dollars would be all right. "Yes, that is fine; [48] that will be all right," he says, "I will go back to-day." After he said that he would accept the ten dollars *as was* sure that his injuries were only very slight, why he then got up and went into Mr. Foley's office and I went into the stenographer's room and he and Mr. Foley were talking in there and I made out a set of release papers on the machine and then I took them in and handed them to Mr. Foley. Defendant's Exhibits 1, 2 and 3 were the papers I made out; at the same time I made some duplicate copies of release and voucher; that is, Defendant's Exhibits 2 and 3. While I was making these out, Mr. Foley was making out the draft. When I took these in and handed them to Mr. Foley, he in turn picked them up and handed this one and the duplicate to Mr. Reid. That is the release, the release of damages and he

(Testimony of W. J. Burton.)

asked him to read that. Mr. Reid read that over, every word of it and when he got down to where it says, "No promise of future employment has been made by the said railroad company as part consideration of this settlement and release or otherwise,"—he read that out loud after he had read it to himself and he wanted Mr. Foley to cut that out; he says that he couldn't go back to work if he signed that and Mr. Foley explained how that had to be in there; that we were not allowed to promise any man future work in case of a settlement. He didn't know about it, but said it didn't look right to him; something like that; and Mr. Foley says, "I will give you a letter to the superintendent so you can go right back to work"; and Mr. Reid read it again and said it was all right and signed it. After he signed this one and the voucher then Mr. Foley asked him to acknowledge receipt of it on the back and dictated this to him and he wrote it and signed it on the original and the duplicate. He said he understood the [49] matter. I paid him the money afterwards.

After the papers were all signed up he was in a hurry to get to the depot to catch that train back, and when they were completed Mr. Foley handed these two papers and the draft attached to me and asked me to go over to the express office for him. So Mr. Reid and I left the office, left our building, crossed the street to the express office and got the money. And he asked me what he should do with that letter he had and I told him turn it in to the

(Testimony of W. J. Burton.)

superintendent's office and he did not know what to do with it and I went down and went and showed him the building the superintendent's office was in and told him to give them the letter there and then he would give him a letter to the foreman certifying that he was ready to resume work.

Cross-examination.

Whereupon, upon cross-examination by Mr. Nuzum he testified as follows:

It is my business to know what happened in my office and the doctor's office. I know in every case. I have been working eleven years for the Great Northern. I know a man has got to read a release before we give him the money. I made notes of everything he did while I read him the release. I do not witness them until I know. I can recall each case which I have investigated and full details, such as I have this one for the last three years. This is the voucher I gave him. I went with him when he cashed the draft at the Great Northern Express Office. There were five cuts in the left shoe and three in the right shoe, and I called the doctor's attention to it when he was in his office and the rags he had on his foot was sticking out the holes. He had oil on the rags; [50] he said to keep his feet dry on account of rheumatism. He talked very freely and sensibly while he was in the office. We asked him about the accident and he explained very fully, very carefully, went over it, went into detail. I don't think he stuttered very much. I don't remember. I don't think he stuttered as much as he

(Testimony of W. J. Burton.)

did here to-day. Mr. Foley gave him the letter to Mr. McCandless, superintendent of the Butte Division. I imagine the superintendent of boarding cars employed the men.

Q. Why should you give a letter to the general superintendent?

A. The Interstate Commerce Commission demanded it.

Mr. ALBERT.—I have a copy of that letter here if you would like.

I asked him to let the doctor see his arm and shoulder, and he refused to do it. He said there wasn't anything the matter, only his ankle and said it was all right. Mr. Foley made the first mention of settlement. Mr. Foley asked him what he thought we ought to do and he said he ought to be paid for the loss of this day. Mr. Reid came up there for the purpose of settlement.

Q. He didn't say anything about it, did he?

A. Yes, he said he thought the company ought to take care of him for that day. I spoke to Mr. Reid about settlement before we got back to the office; after we came from the doctor's office. I asked him to come up and see Mr. Foley before he returned, about a settlement. He was going on down to the train to go home. When we reached the corner I said, "Now, Mr. Reid, you better come up and see Mr. Foley about getting settled up before you go back." And he says, "I will fix that up with the boss and he will take care of me on the pay-roll." I says, "He can't do that. When a man is injured

(Testimony of W. J. Burton.)

he has got to [51] be taken care of by this department, if there is any 'taking care of' to be done." He says, "Well, I didn't know that," he says, "Sure I will go up." And when he left the corner he went up to our office for the express purpose of a settlement and he knew it. As a matter of fact he said he wasn't injured; said it was a slight sprain and would be all right in a few days. That is just the way he put it. I wasn't anxious to get him into my office. My duty is to take care of the men and see that they get the proper treatment. If a man is in town, that is the time to make a settlement. After he gets out into the country we have got to spend money to go after him. I suggested Mr. Reid take his coat off and have his arm examined, which he said was injured, and he refused to do it. There was no statement about this ten dollars being for liniment or anything of that kind.

Testimony of P. B. Foley, for Defendant.

Whereupon defendant called as a witness P. B. FOLEY, who being first duly sworn, testified as follows:

I am assistant claim agent for the Great Northern Railway Company at Great Falls, Montana, and have been there about six years. I recall the matter of the settlement with Mr. Reid. About the first time I saw Mr. Reid was when Mr. Burton advised me that he was in my outer office. I told Mr. Burton to have him come in, which he did, and I went over the case and later got a history of the case from Mr. Reid as to how the accident happened, where,

(Testimony of P. B. Foley.)

and so forth, the nature and extent of his injuries and afterwards advised him—said he better consult the doctor and I called Mr. Burton in my inner office and told him to take Mr. Reid to Dr. Longeway's office. He told me and showed me where—that is, showed me his leg, his right leg; said that he had sustained a sprain [52] to his right ankle, and I questioned him very closely as to how the accident happened, and he said that he was in the car. As I say he showed me his right leg saying that he had sustained a sprain to his right ankle, and I looked at it in a casual way and I said, "What is the matter with the other leg?" I noticed his shoe was cut in several places, cut open, and he told me that he had had previous trouble with his legs on account of them swelling up and I asked him again if he was injured in any other manner or any other place and he said no; said he received a little bump on the arm, and that is about all he told me. He left the office with Mr. Burton and Mr. Burton I understand brought him to the doctor's office. About three-quarters of an hour or possibly an hour afterwards he returned. I asked him, "Did the doctor look you over?" He said, "Yes, sir." I said, "What did he tell you?" "He said my ankle was sprained a little; said he thought it would be all right in a little while and advised me to stay around a few days." "Well," I said, "I think you better do that." I said, "I think you better stay around here a few days and have the doctor attend you." He says, "No, I am anxious to get back to the job. I

(Testimony of P. B. Foley.)

will be all right; it is a little sprain; I will be all right; I want to get back on the job." I says, "All right, suit yourself." Then I said, "Well, what do you want us to do for you?" He hesitated a little while and he says, "I don't know. I will only lose this day." Then I says, "Well, I would like to know what you want us to do for you in settlement, that is in the line of settlement." He says, "Well, how will ten dollars do?" "Well," I says, "If that is what you want," I says, "it is all right." So I proceeded to tell Mr. Burton to make out releases for [53] \$10 for Mr. Reid, which he proceeded to do. After the releases were made out by Mr. Burton he brought them in. I was in the meantime drawing up the draft, writing up the draft, and when Mr. Burton gave me the releases and voucher, why I handed over the releases to Mr. Reid and asked him to read the release, which he proceeded to do. Both of them, the original and duplicate both. And he proceeded to read them to himself. Finally he called my attention to the clause in the release down near the bottom, and I laughed at the time, because invariably nine-tenths of the employees will make the same remark—which says, "No promise of future employment is to be made"—and it is a fact that a great many of employees ask the same question. I told him that clause was put in there because we couldn't promise anybody a permanent position. And he realized it then and understood it so then after he signed the release and the voucher I told him to write his acknowledgment on the back

(Testimony of P. B. Foley.)

and I have a card, a form, that I use with the acknowledgment printed on, that is with a typewriter, and I put it before him and I said, "We have got to have your acknowledgment on the back of this release; here is the form we use." I placed it right in front of him and he wrote from that form his acknowledgment with a pen and ink on the back of the release, and signed it. That is the endorsement on the back of exhibit No. 2, the release. This was written on both the original and duplicate release. There was nothing in Mr. Reid's appearance at the time this transaction was going on to show that he was not understanding or appreciating what was being done. He was absolutely rational; absolutely understood. I made it a point to have him thoroughly read this thing over. After signing the papers I asked Mr. Burton [54] to take him over to the Great Northern Express Office, across the street from my office. He left my office and I never saw him again until to-day.

Cross-examination.

Whereupon, upon cross-examination by Mr. Nuzum, he testified as follows:

I asked Mr. Reid to copy this endorsement from a card. I can't help that he didn't spell it the same way as I spelled it in the form. It is there in substance. I think Mr. Burton is wrong when he said that I asked Mr. Reid, "Now, how will ten dollars suit you," and Mr. Reid said "That was fine." I think I am right, because he is the man that asked me how much. I asked him what he thought we

(Testimony of P. B. Foley.)

should do for him. Mr. Reid suggested I give him ten dollars. At the time Mr. Reid first came in the office, he had a little impediment in his speech, I noticed particularly.

Redirect Examination.

Whereupon, upon redirect examination by Mr. Albert he testified as follows:

No, sir, there was nothing said about this ten dollars being for liniment. No indeed.

Testimony of Dr. H. P. Marshall, for Defendant.

Whereupon Dr. H. P. MARSHALL was called as a witness on behalf of the defendant, and being first duly sworn, testified as follows:

Dr. Marshall's qualifications were admitted by the solicitor for the plaintiff. I made an examination of W. J. Reid in the office of Dr. Ward with Dr. Cunningham. Some X-ray plates were taken to show the extent of his present condition. [55]

Whereupon the following proceedings were had:

Mr. ALBERT.—Before I proceed any further with Dr. Marshall's testimony, I am offering his testimony for the purpose of rebutting the testimony of the plaintiff's doctors with reference to his condition subsequent to the accident, if the Court holds that that testimony is admissible; and it is so understood, Mr. Nuzum.

Mr. NUZUM.—Yes, that is all right.

Mr. ALBERT.—Q. Doctor, I wish you would state what examination you made of Mr. Reid. Give his condition at that time and what you found.

(Testimony of Dr. H. P. Marshall.)

A. We made a complete examination; examined the urine and took X-rays of the foot in two positions entro-posterior and lateral, and as I recall on that examination we found he was suffering from three conditions, in the order of their importance, suffering from arteriosclerosis, double inguinal hernia and third, double flat foot.

Arteriosclerosis is a hardening of the arteries and in this case he has what we call calcification, that is, a deposition of calcium salts in the bladder and organs. The causes of arteriosclerosis may be many. Some people may have what we call poor tubing and prematurely have arteriosclerosis; that is to say, unable to stand the trials and tribulations of life and prematurely their arteries become hard without there being any other cause. However, in most cases they are attributable to infection, syphilis being the most common; typhoid fever being common, alcoholism—in other words, various causes. I should say, a man thirty-nine years of age had one of two conditions, either that he started out in life with very poor tubing or that he had had syphilis some time; but [56] either one of those alternatives. Arteriosclerosis is not produced by trauma. Now, it could be a contributing factor in the production of flat foot inasmuch as with arteriosclerosis there is an undernourishment of the parts supplied by the artery, and, being under nourished, naturally they are weak and produce a flat foot, and that indirectly producing the swelling which we usually have with the marked flat foot. I do not think the arteriosclerosis produces

(Testimony of Dr. H. P. Marshall.)

swelling directly in his feet. I should not call his foot marked flat foot. I should call it a flat foot of the second degree. I couldn't see any particular difference between the two feet. The right foot he said was more painful than the left. The right was slightly more flat than the left. He has a scar on both plantar surfaces, a little bony bunch. This is not the usual growth upon the foot of a normal person. It is diametrically prominent on the other side. There is this same bony growth on both feet, and practically to the same extent. This may or may not be accompanied with pain. If it has no pain, then it does not interfere with locomotion. I didn't see any evidences of any nervousness or neurasthenic trouble. There was not any evidence of neurasthenia or other nervous diseases or effect. No evidence of any organic diseases.

Cross-examination.

Whereupon, upon cross-examination by Mr. Nuzum, he testified as follows:

I don't think you could tell by an objective examination whether a person has neurasthenia. I don't know whether he ever had syphilis. There is no sign of syphilis, except blood; that is there may be no sign.

Redirect Examination.

Assuming that the plaintiff was standing in the cook-car, and the car was derailed and that he was suffering from a right [57] inguinal hernia previous to the accident; that by reason of the derailment he was thrown against the sink, with the forepart of his body, and suffered pain from that

(Testimony of Dr. H. P. Marshall.)

time until the next day, and it was subsequently discovered that this man had a left inguinal hernia as well as the right inguinal hernia, the left hernia or any increase of the right hernia would depend upon how forcibly he was thrown. I cannot answer that absolutely yes or no. A rupture never appears without a failure in development. That is necessary. Unusual, sudden and marked increase in the intra-abdominal pressure can be the predisposing cause, but I do not believe the ordinary throwing of one across something is a cause of it. The usual cause is that lifting which sets the diaphragm and increases markedly the intra-abdominal pressure. The predisposing cause is generally some strain from the inside, rather than a blow from the outside. Assuming a man of his height, weighing about 134 pounds, whose business required him to lift quarters of beef and sacks of flour, potatoes and things of that sort, I should say that the lifting would be more liable to cause the hernia which developed upon this man than any trauma or blow which he received in the car. That hernia is not something that takes place just like that. It is a piece of intra-abdominal content getting into the wrong place and closing up the inguinal canal, or the structures that close up that canal; but for the development of this hernia there must be a failure of development. In other words, that canal must be partially open in the beginning. Assuming that he had a right inguinal hernia before the accident, the fact that he had one prior to the development would show that he had a tendency to it; and some author-

(Testimony of Dr. H. P. Marshall.)

ities believe that every time you operate for hernia on one side you [58] must operate on the other side; that there is a tendency for hernia to be bilateral. In other words, hernias are usually bilateral. Occasionally you will see one on only one side. As to the condition of arteriosclerosis having any effect upon his nervous or neurasthenic condition, I should say that a person who has as marked a degree of thickening of the arteries as this man has would be nervous as a result of it and would have an under function of those parts of the body that are supplied by the arteries that are sclerotic. Assuming the accident to be as has been described, and the fact that he was struck upon the foot with some heavy weight, either a stove lid or something of similar nature; that he also previous to the accident had swelling of the feet, and further assuming that the arteriosclerotic condition as I found it yesterday, I would state in my opinion the nervous or neurasthenic condition would be more probably due to the arteriosclerosis. In other words, the arteriosclerosis I feel confident would cause a nervousness. Trauma alone I do not think would cause a nervous injury. In some it might cause some nervousness. So the more probable one would be the arteriosclerosis.

Cross-examination.

Whereupon, upon cross-examination by Mr. Nuzum, he testified as follows:

There are two kinds of hernia, direct and indirect. A direct hernia is one that goes through what is called Hessel Box's right angle; whereas an indirect hernia

(Testimony of Dr. H. P. Marshall.)

is one that follows from the internal to the external inguinal canal. The indirect hernia runs down the canal. I am not quite positive what I found in this plaintiff. I thought there was an indirect and direct hernia on one side. The left side I think is regular indirect hernia, but I am not sure about [59] that because he could have the same appearance as we have got on the right side. I wouldn't be sure without operating; that is very difficult to tell.

Q. And you cannot tell what the cause is of the hernia?

A. I know what the predisposing cause is.

Q. But you cannot tell whether or not it is caused by a severe strain or by lifting or pushing, can you?

A. No, in an individual case I cannot tell what the precipitating cause was.

Q. And isn't it possible, say a man was thrown violently across a car so he could bruise and strain himself, wouldn't that cause this hernia to happen?

A. If thrown violently?

Q. If thrown violently. A. If thrown violently.

Testimony of Ole Rosholt, for Defendant.

Whereupon OLE ROSHOLT was called as a witness on behalf of the defendant, and being first duly sworn, testified as follows:

I live at Dutton, Montana, and have lived there for about six years. My business is at present farming. Prior to this summer I worked as bridge man for the Great Northern. I was foreman of a bridge gang working at Geyser at the time of the accident. I know Mr. Reid. We had been working there about

(Testimony of Ole Rosholt.)

four days. Worked with him from the first of April until the first of July. We averaged about thirteen men in the gang. Reid was doing all the cooking. I had seen him handling different stuff around in the car. Before the accident I saw him handle beef and flour, sugar, potatoes and beets. The potatoes and flour came in sacks and the beef generally in quarters. He was moving this around in the car before the accident. I saw him walking around. He then had his shoes cut over here, slashed in two or three places. I don't know how many slashes it was, but both shoes were slashed. Before the accident he was complaining about rheumatism, his feet swelling up, and then he always was limping. I saw him on [60] the day of the accident. He got breakfast that day and then we got ready to go out, just before seven o'clock and he had made breakfast and we had our breakfast and then this accident happened. As soon as the car stopped I went into the car and I found Mr. Reid standing at the table, and I asked him if he was hurt and he says no. He says he fell when the car was running on the ties, he fell on the floor. It was between ten and eleven I came back from the bridge after some spikes and then I saw him dressed up and I asked him where he was going and he says he was going to Great Falls to see a doctor. He says he thought he had a sprained ankle. He did not appear at either of these times that I saw him that day immediately after the accident, or at ten o'clock, to be nauseated or sick. After the accident and before he left for Great Falls he put kettles on the stove and

(Testimony of Ole Rosholt.)

put in those kettles what was supposed to be for dinner. I saw him at supper time about six o'clock. He said he was up to Great Falls and settled with the Great Northern. I saw him every day around there from that time on until he quit. There was no difference so far as I could see between the way he worked before the accident and after the accident. I would see him at frequent times around there. I saw him the day he quit. He said he was going to Spokane to his family. He didn't say anything to me about quitting, because he was unable to work.

Cross-examination.

Whereupon upon cross-examination by Mr. Nuzum he testified:

I was foreman of the repair gang. My time required me to be on the work to see that everything was done properly. Most of my time, if they were repairing a bridge, was spent watching them. I didn't spend much of my time looking in [61] the cook-car.

Redirect Examination.

Whereupon upon redirect examination by Mr. Albert, he testified as follows:

At the time the accident happened my gang had not gone down to the bridge yet to work. We were right there.

Testimony of Jonas Rosok, for Defendant.

Whereupon JONAS ROSOK was called as a witness on behalf of the defendant, and being first duly sworn, testified as follows:

I know Mr. Reid, the plaintiff. He worked there

(Testimony of Jonas Rosok.)

about three months. I knew him the first time at Great Falls when he got on the job. He joined the bridge and building gang that we men were on there. Was cook on the crew. I saw him and observed him there before the accident; saw him on the morning of the accident and subsequent to it. I couldn't see any difference between the way he handled his feet and the condition of his feet after the accident as I did before. Before the accident he had his shoes cut up, slashed up from the toe on up. I couldn't say if it was both shoes, but I am sure it was one of them. There were several slits. I saw him on the day of the accident. After the accident I saw him in the car, the first time in the cook-car. I went in to see how it looked. He was kind of cleaning up there. I didn't have any talk with him then. He came out of the car afterwards and was talking. He said he got a lid of the stove on his foot. He said he thought he had a bruise on his foot. He was walking around there looking for his hat. After that he was around the car, I guess. The foreman sent me down there to his car to fix a pipe,—a stovepipe. He was around the cook-car yet. I found three or four bottles lying on the floor there. [62] Couldn't say for sure what these bottles were, but I supposed some kind of liniment had been in them. They were empty then. This was before he left to go to Great Falls on account of the accident. I saw him when he came back. He said he had settled with the company. I saw him working around there afterwards from that time on until he quit, the same as he did before. He

(Testimony of Jonas Rosok.)

was still acting as cook there. When he left for Spokane he said he was going to his family.

Cross-examination.

Whereupon upon cross-examination by Mr. Nuzum, he testified as follows:

I went in to cut out the roof, because the roof was too close to the pipe, and fix it so it wouldn't catch fire.

Testimony of David Davidson, for Defendant.

Whereupon DAVID DAVIDSON was called as a witness on behalf of the defendant, and being first duly sworn, testified as follows:

I was in this bridge gang that was around there on the day Reid got hurt. Before the accident Reid complained about his foot. He said he had rheumatism, bothered with rheumatism and hurt awful. That was from the time he started to work there. He had his shoes slashed up. It was on both feet. Before the accident he said that he was ruptured once. I saw him on the morning of the accident. He came out of the car, and didn't have a cap on his head, and the boys went over to ask him if he was hurt, and he said no. I was out at work when he left for Great Falls. I saw him that night when he came back. He said he had been down to Great Falls and settled with the company for thirty dollars. Between that time and the time he went away, I saw him around there. He acted [63] just the same after the accident as he did before. Didn't seem to have any more trouble or any less trouble with his feet than he had before. Seemed to be exactly the same. Did his

(Testimony of David Davidson.)

work in the same way. Didn't have anybody doing his work for him afterwards. He did all the work excepting help to carry in the water and coal, same as before the accident. He had help before the accident the same as afterwards. He was no sicker when he went away than he was when he came there.

Cross-examination.

Whereupon upon cross-examination by Mr. Nuzum he testified:

He told us all at the supper table about settling with the company.

Testimony of Elef Stensland, for Defendant.

Whereupon ELEF STENSLAND was called as a witness on behalf of the defendant, and being first duly sworn, testified as follows:

I was a member of this bridge and building gang that was at work there at this place, Geyser, and I have known this man Reid since the first of April, since he started to work. I was a carpenter. I had the same job as the others. At the time the accident happened we was not working. That happened at half-past six in the morning, between half-past six and seven. We had not gone up to the bridge at that time. I had observed him on the days before the accident, noticed him going around, walking around. He couldn't walk very good and he said several times before that he had rheumatism before the accident. He had his shoes cut up, both shoes. I didn't notice any difference after the accident in the way [64] he handled himself at that time than it was before.

(Testimony of Elef Stensland.)

I was around that night when he came in to the supper table. He said he was in Great Falls and settled; settled for thirty dollars. He told us all the same thing there; we were right there at the supper table when he said that. When he went away finally he talked to the crowd about going away, said he was going to Spokane to see his family.

Cross-examination.

Whereupon upon cross-examination by Mr. Nuzum he testified as follows:

I know a man by the name of Barry, who worked in that gang. He is not here. I don't know anything about him.

Testimony of Chris Jacobsen, for Defendant.

Whereupon CHRIS JACOBSEN was called as a witness on behalf of the defendant, and being first duly sworn, testified as follows:

I was in this bridge and building gang that worked at Geyser at the time this accident happened. I know the plaintiff. I had seen him around there before that. He was limping around from the time he started to work. He told me he had rheumatism before the accident. He had his shoes cut up before the accident. I didn't see much difference about him after the accident. He worked all the time from that time on until the time he left in July. He didn't have any more assistance after the accident about his work than he did before. He had the same.

Cross-examination.

Whereupon upon cross-examination by Mr. Nuzum he testified as follows:

(Testimony of Chris Jacobsen.)

I am working for the Great Northern now. The other boys were working still in the same gang, carpenters. [65]

Testimony of Ole Tweedt, for Defendant.

Whereupon OLE TWEEDT was called as a witness on behalf of the defendant, and being first duly sworn, testified as follows:

I am working for the Great Northern. Davidson and Rosholt are not working for the Great Northern. At the time of the accident I was. I know Reid. I remember seeing him around the boarding-car and camp before the accident. Before the accident I noticed he had his shoes cut. He said he had rheumatism. He quite often made complaint about his feet bothering him or troubling him. He said his feet were hurting him. After the accident I saw him around. I was there until he left. I noticed him on the day of the accident. I had a talk with him on that day. I asked him if he got hurt and he said no. I didn't see him when he went away that day. We was out on the bridge working then. I saw him when he came back. He said he had settled the case and got thirty dollars. It was the same day.

Testimony of John W. Cox, for Defendant.

Whereupon JOHN W. COX was called as a witness on behalf of the defendant, and being first duly sworn, testified as follows:

I am connected with the Great Northern and was at the time of the accident. I was there with this train on which that car was derailed. We had a car to set out there and we had it in behind the outfit.

(Testimony of John W. Cox.)

The car was totally derailed and down a slight embankment. It was not rolled over or anything of that sort. I should judge it was at a thirty-degree angle on the bank. It was sitting up. I went into the car after the accident and looked around. I asked Reid how badly he was hurt, so I could make out my reports. He said his left [66] forearm was bruised and his left ankle was bruised and sprained. He didn't claim he was hurt any other place. Didn't say anything whatever about back or stomach. He didn't make any claim his other foot was hurt. I made out my report; it was just as he told me. This was right after the accident, before we even started to re-rail the car. I did not see him again that day, not after I got my information from him that I wanted, then re-railed the car and we left as soon as we could get the car on the track. I filed this information with the agent, so he could wire in to the superintendent and made my report when I got this made out. I sent a telegram advising him of the accident and what this man claimed.

Cross-examination.

Whereupon upon cross-examination by Mr. Nuzum he testified as follows:

I was conductor on the train.

Testimony of F. H. Nolan, for Defendant.

Whereupon F. H. NOLAN was called as a witness on behalf of the defendant, and being first duly sworn, testified as follows:

I was head brakeman on this train that was being

(Testimony of F. H. Nolan.)

switched there at Geyser upon the day of this accident. I recall the accident to the cook car. I saw Reid around that day. I went in the car as soon as we got the car stopped after the derailment and he told me that he had his left forearm bruised and ankle bruised and that he thought he would not lose any time over the accident. He didn't mention anything about laying off or anything of that kind. I saw him on one occasion before at Rainsford, I should judge four or five days before. He then said he was affected very badly with rheumatism and he would have to lay off and go to the springs he [67] thought. He said his feet were swollen up and showed them to me. That is, he had his shoes on, you know. There was a pair of old shoes he was wearing around the car and they were badly cut up. I should judge there must have been a dozen holes in them.

Cross-examination.

Whereupon upon cross-examination by Mr. Nuzum he testified as follows:

I was one of the train crew that moved the work train. We moved the train from place to place when they transferred. Had instructions to move them at different times. I didn't stay with the train all the time.

Testimony of George L. Robinson, for Defendant.

Whereupon GEORGE L. ROBINSON was called as a witness on behalf of the defendant, and being first duly sworn, testified as follows:

I was rear brakeman of that train crew. I am

(Testimony of George L. Robinson.)

now conductor. I was on the train at the time of the accident. All the witnesses live in Montana. We have come over here to the trial. I assisted in re-railing the car. After it had been re-railed I went in to ascertain what damage had been done, so that I could intelligently make out the necessary reports. In connection with any of these accidents, whenever there is any damage to either equipment or injuries to persons, either one, we are required to make out a report if we care to remain in the service, and tell what the facts are with reference to it. I asked Reid in regard to the damage or personal injury. He told me there was no harm done.

Cross-examination.

Whereupon upon cross-examination by Mr. Nuzum he testified as follows: [68]

Each man is required to sign a report at least.

Testimony of H. J. Putnam, for Defendant.

Whereupon H. J. PUTNAM was called as a witness on behalf of the defendant, and being first duly sworn, testified as follows:

I was swing brakeman on this train at the time of the accident; that is the brakeman in the middle. This was a through freight and local combined,—a mixed train. This outfit train was already at the station when we got there. We were making a spot there, putting some cars in. I remember the fact of the car being derailed. I saw Mr. Reid about the premises that day. The first conversation I had with him before I moved him I went in and told him,

(Testimony of H. J. Putnam.)

I said, "We are going to have to do a little switching and we will have to move you so watch out for your pots and stock." He says, "all right." The next time I saw him was after the derailment. He was standing in the door when I came up alongside of the car and I asked him if he was hurt and he said, "nothing serious." That is about all I had to do with it. He said something hit him on the ankle; said it was pretty sore; that is all. I had seen him before this time. I always noticed he limped a little bit; shoes were all cut up like he might have rheumatism. I saw him about a week after the accident at Buffalo. I had a conversation with him with reference to the injury and the accident. I asked him how he felt, and he said he felt all right. He was still cooking for the outfit at Buffalo.

Cross-examination.

Whereupon upon cross-examination by Mr. Nuzum he testified as follows:

I am still in the employ of the Great Northern.
[69]

Whereupon the defendant rested.

Whereupon the following testimony was offered in behalf of the plaintiff upon rebuttal:

Testimony of W. J. Reid, for Plaintiff (Recalled in Rebuttal).

W. J. REID was recalled as a witness and testified as follows:

I heard the statements of some of these gentlemen who said I had rheumatism. I never have had

(Testimony of W. J. Reid.)

rheumatism. I never told them that I had rheumatism. I testified I had an ingrowing toe-nail. That was on the left foot. I never told anybody I got thirty dollars from the company. I never told anybody that I had settled with the company. I never knowed until Mr. Barry told me. He was the man that I saw when I came back, first man I spoke to. He is not here. The doctor examined me in his office. I didn't refuse to let them,—I did not refuse nothing.

Q. You heard the testimony I believe of Mr. Foley who said that you asked for ten dollars and said you would settle for ten dollars.

A. I didn't ask for ten dollars.

Q. Who suggested the ten dollars?

A. He suggested it himself.

Cross-examination.

Whereupon, upon cross-examination by Mr. Albert, he testified as follows:

Q. You recollect now that he suggested the ten dollars, do you? A. Well, I never asked for it.

Q. Do you recollect whether he suggested the ten dollars or not?

A. Well, he gave it to me anyway. I didn't ask for it. I know I didn't.

Whereupon the following proceedings were had:

Defendant moves the Court to strike all of the testimony in the record, received subject to defendant's objection, and all testimony relating to conditions or injuries developing subsequent to the time of the settlement, and all testimony [70] relat-

(Testimony of W. J. Reid.)

ing to the injuries, if any, which were not known to either or both parties at the time of settlement, upon the ground that such testimony and all of the same is immaterial, and is incompetent to contradict or vary the terms of the contract admitted by the plaintiff to have been executed by him; that it is a valid written instrument; that the words contained in the release are general and released all injuries arising out of the accident in question, and are not limited by the specification of any specific injuries, and that the release and the endorsements upon the back thereof show that the plaintiff had fully released the defendant from all claims, on account of the injuries in question, and further upon the ground that such testimony is not within the issues in the case; that the pleadings do not allege sufficient allegations to base an order setting aside the release upon the ground of mutual mistake.

Defendant further moves the Court to dismiss the bill to set aside the release, upon the ground that the evidence is not clear and convincing; that the release was procured by fraud and misrepresentation, or that there was a mutual mistake of fact, and upon the ground that the plaintiff has not sustained the allegations of the bill, which might entitle him to judgment setting aside the release.

Whereupon the Court denies the motions, and each of the same, to which ruling of the Court the defendant excepted, which exception is allowed by the Court.

Whereupon said case was submitted to the Court for its decision. [71]

Defendant's Exhibit No. 1—Draft.

GREAT NORTHERN RAILWAY COMPANY.
No. 18845. \$10.00.

Great Falls, May 10th, 1915.

Pay to the Order of W. J. Reid, Ten & no/100 Dollars, for Personal Injury Rec'd near Geyser, Montana, May 10th, 1915, as per release and receipted voucher for like amount attached hereto.

P. B. FOLEY,

Asst. Claim Agent.

To Assistant Treasurer Great Northern Railway Company, St. Paul, Minnesota.

Note.—This Draft will be honored only when accompanied by receipted voucher for like amount.

Endorsement on back: W. J. Reid. [72]

Defendant's Exhibit No. 2—Release of Damages.

GREAT NORTHERN RAILWAY COMPANY.
RELEASE OF DAMAGES.

KNOW ALL MEN BY THESE PRESENTS, that in consideration of the sum of Ten and no/100 Dollars, to me in hand paid by the Great Northern Railway Company, the receipt whereof is hereby acknowledged, have released, acquitted and discharged, and do, by these presents, release, acquit and discharge said Railway Company, its successors and assigns of and from any and all liability, causes of action, costs, charges, claims or demands of every name and nature, in any manner arising or growing

out of, or to arise or grow out of personal injuries received by me (W. J. Reid) at or near Geyser, in the State of Montana, on or about the 10th day of May, 1915, while acting as a Cook, I met with an accident whereby I sustained personal injuries; or arising, or to arise, out of any and all personal injuries sustained by me at any time or place while in the employ of said Railway Company prior to the date of these presents.

No promise of future employment has been made to me by said Railway Company as part consideration of this settlement and release, or otherwise.

In witness whereof, I have hereunto set my hand and seal this 10th day of May, A. D. 1915.

W. J. REID. (Seal)

In Presence of

P. B. FOLEY.

W. J. BURTON.

[Endorsed on the back is the following:]

I have Read within Release before signing and fully understand that the sum of ten dollars is in full settlement of all claim of every kind.

W. J. REID.

Witness:

P. B. FOLEY.

W. J. BURTON. [73]

Defendant's Exhibit No. 3—Voucher.

GREAT NORTHERN RAILWAY COMPANY.

To W. J. Reid, Cook,

Address Geyser, Montana.

Please date and sign receipt and return to Assistant Treasurer, St. Paul, Minn.

For and in consideration of any and all claims
past, present and prospective against the
Great Northern Railway Company arising
or to grow out of personal injuries received
by me at or near Geyser, Montana,
on or about May 10th, 1915.....\$10.00

I certify, that the above is a true copy of an original account approved by the proper officer, that the same has been examined, found correct, registered and filed in the Accounting Department of the Company.

J. H. BOYD,

Auditor Disbursements.

Treasurer's Voucher Made ————. 191—, by
_____.

Received May 10th, 1915, of the GREAT NORTHERN RAILWAY CO., Ten and no/100 Dollars, in full for the above account.

\$10.00. (Sign here) W. J. REID.

Endorsed on the back is the following:

Great Northern Railway Co. Voucher No. J289.
Comptroller's No. 24278. Month of May, 1915. In favor of W. J. Reid, Cook, Geyser, Montana.

\$10.00.

Approved for payment.

G. R. MARTIN,

Comptroller.

Paid by draft No. 18845. Drawn by P. B. Foley.
A. C. A., Great Falls, Mont.

Treasurer's Office. Paid May 18, 1915. G. N. Ry.
Co. [74]

**Defendant's Exhibit No. 4—Letter, Dated 10/22/15,
from W. J. Reid to Claim Agent.**

Spokane, 10/22/15.

Clame Agent,

Dear Sir: I beg to call your atention to the fact I was hurt at Geyser, Mont., Butt Devison, whil cooking in a Bording Car for Ole Rosenholt 11 day May 1915, and I settled with you \$10 dollars. I was to have stiddy Job as I supposed I understud so from you. I was sick for 3 months after I was hurt it efected my spine my feet sweld up so I could not walk and I hed to send all my mone getting well all though I went to work the same day I was hurt in the same car. My helth failed stedly tile on July the secont I was forsed to give up my work with the G. N. Ry. I am now well again and am very badly in nead of work as I have a big famly. The letter you gave me to Giles the sup. I gave it to Mr. Burdic the inspector of Bording cars could not of been delivered as I have reported at Hillyard for 4 times and the was no aten, and I no they have hired lot of cook since I would deam it a great faver if you interseat in my Be have take it up with the company and praps I can get cooking in one of the cars or a Lunch Room. I thank you in advance for enything you can do for me the last time I stad 3 month with the car I was on.

Your Resp.

W. J. REID,
Yale Hotell,
Riverside,
Spokane. [75]

Opinion and Findings.

Thereafter and upon the 12th day of October, 1916, the court by Hon. FRANK H. RUDKIN, judge thereof, made and filed in said action his opinion, order and finding in the following language:

On and for some time prior to the 10th day of May, 1915, the plaintiff was in the employ of the defendant as a cook on a work train at different points in the State of Montana, and on the above date while so employed near the town of Geyser, the car in which he was at work became derailed, inflicting upon him certain personal injuries which form the basis of the present controversy. The accident happened at about nine o'clock in the morning, and soon thereafter the plaintiff went, or was taken, to Great Falls, Montana, and called upon the claim agent and surgeon of the defendant company. As a result of the derailment a stove cover or lid fell on the plaintiff's foot, and for this injury the surgeon treated him by bandaging the injured member. After leaving the surgeon the plaintiff was taken to the claim department and there, in consideration of the sum of ten dollars to him paid, executed the following release:

"KNOW ALL MEN BY THESE PRESENTS, That in consideration of the sum of Ten and No/100 Dollars, to me in hand paid by the Great Northern Railway Company, the receipt whereof is hereby acknowledged, have released, acquitted and discharged, and do, by these presents, release, acquit and discharge said railway company, its successors

and assigns of and from any and all liability, causes of action, costs, charges, claims or demands of every name or nature, in any manner arising or growing out of or to arise or grow out of personal injuries received by me (W. J. Reid) at or near Geyser, in the State of Montana, on or about the 10th day of May, 1915, while acting as a cook, I met with an accident whereby I sustained personal injury; or arising, or to arise, out of any and all personal injuries sustained by me at any time or place while in the employ of said railway company prior to the date of these presents.

“No promise of future employment has been made to me by said railway company as part consideration of this settlement and release, or otherwise.”

[76]

The back of the release contained the following endorsement in the handwriting of the plaintiff and signed by him:

“I have read with in Release Before signing and fully understand that the sum of ten dollars is in full settlement of all claim of every kind.”

The voucher signed by the plaintiff contained substantially the same recital, viz.:

“For and in consideration of any and all claims past, present and prospective against the Great Northern Railway Company arising or to grow out of personal injuries received by me at or near Geyser, Montana, on or about May 10th, 1915.”

Soon after the execution of this release and the receipt of the money, and on the same day, the plain-

tiff returned to Geyser and resumed his former employment that evening with the defendant and continued in that employment until the second day of July following. Thereafter an action was commenced on the law side of this court to recover damages for personal injuries growing out of the accident in question, and the foregoing release was pleaded in bar. Thereafter the present suit was commenced on the equity side of the court to cancel and set aside the release on the ground of fraud and mistake.

The injuries sustained by the plaintiff as set forth in his complaint are the following:

A broken arch of the right foot; a double inguinal hernia; a severe wrench of the back; and a severe shock to the nervous system. The grounds upon which the release are assailable are the following: First. That the surgeon of the defendant company, after a cursory examination, informed the plaintiff that his injuries were slight and amounted to nothing beyond a mere nervous shock, and a slightly sprained ankle and instep, and that he would entirely recover in the course of a day or two; and that the claim agent of the defendant company informed the plaintiff that he would give him ten dollars, representing [77] two or three days' pay; that the plaintiff might remain in Great Falls during that period, and that his position would be held open for him. Second. That the plaintiff's physical and mental condition was such that he was unable to read or comprehend the contents of the receipt; that he did not have time to read the same; that he signed

it relying upon the representations of the claim agent and surgeon that it was a receipt for ten dollars and nothing more; and that he would not have signed it but for these representations. And lastly, that the injuries above set forth were not taken into consideration by or known to the plaintiff or the representatives of the defendant at the time the release was executed.

One who seeks to set aside a release or other solemn contract on the ground of fraud or mistake must make out his case by clear and convincing proof. A mere preponderance of the testimony will not suffice. Guided by this wholesome and salutary rule proof in this case utterly fails as to the first and second grounds above set forth. Manifestly no misrepresentations of any kind were made to the plaintiff by the surgeon or the claim agent either as to the nature or extent of his injuries. As a matter of fact it clearly appears, not only from the testimony but from the allegations of the complaint as well, that none of the parties concerned knew or even suspected that the injuries sustained by the plaintiff were more than superficial. The injury to the right foot was the only injury complained of, aside from a slight bruise on the arm or shoulder which the plaintiff himself deemed so trifling and inconsequential that he refused to remove his coat so that the surgeon might examine it. And a word here as to the extent of the injuries to the foot may not be out of place. No doubt the arch of the right foot is now broken down; but for that matter [78]

so is the arch of the left foot. The testimony shows clearly that the plaintiff complained continuously of his feet prior to the accident, and that his shoes were all slit up to relieve them. This goes far to show, if it does not demonstrate, that the present condition of his right foot is the result of disease or other infirmity rather than of the accident complained of.

The claim that the plaintiff was unable to read or comprehend the contents of the release by reason of his physical and mental condition is likewise unfounded. The testimony shows that he fully comprehended all that transpired about him, and he was able to contradict the testimony of other witnesses whenever it appeared to his interest to do so. He told the entire work crew at supper that night that he had settled with the railroad company for thirty dollars, and in a letter written a few months later he again refers to the settlement. He took up his usual avocation as soon as he could return to Geyser after the execution of the release, and as already stated, it is all but certain that no person connected with the affair, including the plaintiff himself, had the slightest suspicion that his injuries were at all serious. Written contracts and the statute of frauds will be of little avail if contracts are to be ruthlessly set aside upon such a showing. The only question in the case that gives rise to any doubt in my mind is the question of mistake. If the plaintiff received injuries other than the superficial injury to his foot it is shown beyond question that such injuries were unknown to the contracting parties, and were not taken into consideration in the settlement made. Is

this a sufficient ground in equity for setting aside the release? All the authorities agree that a release of this kind can not be avoided for mere [79] mistakes of opinion or prophecy; in other words, merely because the injuries prove more serious and lasting than the parties thought them to be. Some of the authorities go so far as to hold that a general release of this kind cannot be avoided for mutual mistake at all. Thus in *Houston & T. C. R. Co. v. McCarty*, 60 S. W. 429, the only injury known to or within the contemplation of the contracting parties was an injury to the ankle; but it later developed that there were injuries to the spine and bowels, which were of much graver and more permanent character than the injuries settled for, yet the Supreme Court of Texas held that the release was an absolute bar to the action, stating its conclusion in these words:

“Our conclusion is that the release embraces all damages resulting from the injuries to the plaintiff, and that it cannot be varied by parole evidence tending to show that other injuries than that to the ankle were not in the contemplation of the parties.”

This is the extreme view, however, and is not supported by the weight of authority.

Lumley v. Wabash R. Co., 76 Fed. 66.

Great Northern Ry. Co. v. Fowler, 136 Fed. 118.

In the cases last cited the releases were avoided for mutual mistake of the parties, and while the form of the releases may have differed to some extent from the release now under consideration, no importance seems to have been attributed to that

difference. If, therefore, the plaintiff in this action sustained injuries other than the slight injury to his foot, such injuries were not within the contemplation of the contracting parties and the release should not be permitted to stand in the way of a recovery therefor.

Now as to the nature and extent of the injuries suffered by the plaintiff as a result of the accident complained of. It will readily be conceded that at the present time his [80] body is poorly nourished and that his general health and physical condition are far from good. It cannot be said, however, that these conditions are attributable wholly, or even in a considerable part, to the accident. According to the testimony of one of the physicians his present ailments are, in the order of importance, first, arteriosclerosis; second, double inguinal hernia; and third, double flat foot. It does not appear from the testimony that the first of these was produced in any wise by the accident, and while the condition of the right foot may have been aggravated by the accident it was not caused thereby. The plaintiff had one hernia on the right side for a period of some two years prior to the accident, caused by lifting ice into an ice-box, and the second developed soon after the accident. The course of its development, however, is left in doubt and uncertainty. The plaintiff simply states that he felt a pain in that region the day after the accident, and that he complained of such an injury to the railroad company in June following the accident; but the first definite information we have on the subject is found in the testimony

of the physicians who examined him some eight or nine months later when his condition was found substantially the same as it is to-day. Beyond this the testimony throws no light upon his condition or the cause thereof. Good faith, common honesty, and the peace of society demand that compromises and settlements of this kind should be upheld unless impeached for fraud or mistake by clear and convincing proof. As well said by Judge Sanborn in *Chicago & Northwestern Ry. Co. v. Wilcox*, 116 Fed. 913:

“The policy of the law has always been to promote and sustain the compromise and settlement of disputed claims. It loves peace, hates broils and dissensions, and discourages the [81] prolongation of litigation and the revival of controversies which have once been closed. The judgment of a court settles the claims submitted to it, and estops the parties from again litigating them after they have been adjudicated. In the absence of fraud or mistake, an executed agreement of settlement of an unliquidated or disputed claim constitutes as conclusive and as effectual an estoppel against the parties of the compromise from again litigating the claim thus settled as the final judgment of a court of competent jurisdiction, to the effect that the rights of the parties are as they are set forth in the agreement; and such a contract is always upheld by the courts. . . . Nor will such agreements be lightly disturbed upon confused, conflicting, or uncertain evidence of fraud or mis-

take. The burden is always upon the assailant of the contract to establish the vice which he alleges induced it, and a bare preponderance of evidence will not sustain the burden. A written agreement of settlement and release may not be rescinded for fraud or mistake, unless the evidence of the fraud or mistake is clear, unequivocal, and convincing."

Nevertheless the condition of the plaintiff is a pitiable one. He is illiterate and far below the average in intelligence, and if he has sustained injuries not embraced in the compromise set forth in the complaint he should have his day in court and an opportunity to establish his rights before a jury. I am therefore of opinion that the release is no bar to an action by the plaintiff for any damages sustained by him aside from the injury to his foot which was clearly within the contemplation of the parties when the settlement was made. Whether a release of this kind can be set aside in part may admit of question, although I see no reason why it should not be sustained insofar as it sets forth and embodies the actual agreement of the parties.

See *Lumley v. Wabash R. Co.*, *supra*, and cases there cited.

This question will be determined, however, when the final decree is submitted.

Whereupon the defendant excepted to the ruling and finding of the Court that the release was no bar to an action by the plaintiff for any damages sustained by him aside from the injury to his foot, which exception was allowed by the [82] Court.

Judgment and Decree.

Thereafter and upon the 14th of November, 1916, a judgment and decree was signed and entered in favor of the plaintiff against the defendant, in the following language:

This cause came on to be heard at this term and was argued by counsel; and thereupon upon consideration thereof, it was ordered, adjudged, and decreed as follows, viz.:

That the release set forth in the complaint herein be and the same is hereby upheld and sustained insofar as it purports to release any and all claims for damages for injury to the right foot and for injuries to the arm and shoulder.

IT IS FURTHER CONSIDERED, ADJUDGED AND DECREED, that said release be and the same is hereby canceled, annulled, set aside and held for naught insofar as it purports to release any claim for damages for other injuries complained of and set forth in the complaint herein.

IT IS FURTHER ORDERED, that the plaintiff have and recover herein his costs to be taxed and that execution issue therefor.

To all of which the defendant excepts and its exception is allowed.

Done in open court this 14th day of November, 1916.

FRANK H. RUDKIN,
Judge. [83]

Now, in furtherance of justice and that right may be done, the defendant presents the foregoing as its

statement of evidence and bill of exceptions in this case, and prays that the same may be cited, signed and certified by the judge as provided by law, and filed as a statement of evidence and bill of exceptions.

CHARLES S. ALBERT,

THOMAS BALMER,

Solicitors for Defendant.

Due service of the within statement of evidence and bill of exceptions, by a true copy thereof, is hereby admitted at Spokane, Washington, this 23d day of November, 1916.

(Signed) STEAKE & NUZUM,

Solicitors for Plaintiff. [84]

Stipulation Re Statement of Evidence.

IT IS HEREBY STIPULATED, that the foregoing is conformable to the truth, and contains all of the evidence offered or introduced at the trial of the above-entitled action; also the findings of the Court in full and all objections, orders, rulings, exhibits and all other proceedings upon said trial, and that the same is true, complete and properly prepared, and that the same shall be settled and allowed as the statement of evidence and bill of exceptions herein by the Hon. Frank H. Rudkin, Judge of said court, without further notice.

STEAKE & NUZUM,

THOMAS BALMER,

Attorneys for Plaintiff.

CHARLES S. ALBERT,

THOMAS BALMER,

Attorneys for Defendant. [85]

[Title of Court and Cause.]

Certificate and Order Settling and Allowing Statement and Bill of Exceptions.

I hereby certify that the foregoing statement of evidence and bill of exceptions has been examined by me, and found conformable to the truth, and contains all the evidence offered or introduced on the trial of said cause; also the findings of said Court in full, the objections, rulings, orders, exhibits and all other proceedings had upon said trial, and that the same is true, complete and properly prepared, and I hereby settle, allow and approve the same as the statement of evidence and bill of exceptions herein.

Dated at Spokane, Washington, December 8th, 1916.

(Signed) FRANK H. RUDKIN,
Judge.

[Endorsements]: Statement of Evidence and Bill of Exceptions. Filed in the U. S. District Court for the Eastern District of Washington, December 8, 1916. W. H. Hare, Clerk. By S. M. Russell, Deputy. [86]

[Title of Court and Cause.]

Opinion.

STEAKE & NUZUM, for Plaintiff.

CHARLES S. ALBERT and THOMAS

BALMER, for Defendant.

RUDKIN, District Judge.

On and for some time prior to the 10th day of

May, 1915, the plaintiff was in the employ of the defendant as a cook on a work train at different points in the State of Montana, and on the above date while so employed near the town of Geyser, the car in which he was at work became derailed, inflicting upon him certain personal injuries which form the basis of the present controversy. The accident happened at about nine o'clock in the morning, and soon thereafter the plaintiff went, or was taken, to Great Falls, Montana, and called upon the claim agent and surgeon of the defendant company. As a result of the derailment a stove cover or lid fell on the plaintiff's foot, and for this injury the surgeon treated him by bandaging the injured member. After leaving the surgeon the plaintiff was taken to the claim department and there, in consideration of the sum of ten dollars to him paid, executed the following release:

“KNOW ALL MEN BY THESE PRESENTS, That in consideration of the sum of ten and no/100 dollars, to me in hand paid by the Great Northern Railway Company, the receipt whereof is hereby acknowledged, have released, acquitted and discharged, and do, by these presents, release, acquit and discharge said railway company, its successors and assigns, of and from any and all liability, causes of action, costs, charges, claims or demands of every name or nature, in any manner arising or growing out of, or to arise or grow out of personal injuries received by me (W. J. Reid) at or near Geyser, in the State of Montana, on or about the 10th day of May, 1915, while acting as a cook, I met with an accident whereby I

sustained personal injury ; or arising, or to arise, out of any and all personal injuries sustained by me at any time or place [87] while in the employ of said railway company prior to the date of these presents.

“No promise of future employment has been made to me by said railway company as part consideration of this settlement and release, or otherwise.”

The back of the release contained the following endorsement in the handwriting of the plaintiff and signed by him :

“I have read within Release Before signing and fully understand that the sum of ten dollars is in full settlement of all claim of every kind.”

The voucher signed by the plaintiff contained substantially the same recital, viz. :

“For and in consideration of any and all claims, past, present and prospective against the Great Northern Railway Company arising or to grow out of personal injuries received by me at or near Geyser, Montana, on or about May 10th, 1915.”

Soon after the execution of this release and the receipt of the money, and on the same day, the plaintiff returned to Geyser and resumed his former employment that evening with the defendant and continued in that employment until the second day of July following. Thereafter an action was commenced on the law side of this court to recover damages for personal injuries growing out of the accident in question, and the foregoing release was pleaded in bar. Thereafter the present suit was commenced on the equity side of the court to cancel

and set aside the release on the ground of fraud and mistake.

The injuries sustained by the plaintiff as set forth in his complaint are the following:

A broken arch of the right foot; a double inguinal hernia; a severe wrench of the back; and a severe shock to the nervous system. The grounds upon which the release are assailed are the following: First. That the surgeon of the defendant company, after a cursory examination, informed the plaintiff that his injuries were slight and amounted to nothing beyond a mere nervous shock, and a slightly sprained ankle and instep, and that he would entirely recover in the course of a day or two; and that the claim agent of the defendant company informed the plaintiff that he would give him [88] ten dollars, representing two or three days' pay; that the plaintiff might remain in Great Falls during that period, and that his position would be held open for him. Second. That the plaintiff's physical and mental condition was such that he was unable to read or comprehend the contents of the receipt; that he did not have time to read the same; that he signed it relying upon the representations of the claim agent and surgeon that it was a receipt for ten dollars and nothing more; and that he would not have signed it but for these representations. And lastly, that the injuries above set forth were not taken into consideration by or known to the plaintiff or the representatives of the defendant at the time the release was executed.

One who seeks to set aside a release or other sol-

em contract on the ground of fraud or mistake must make out his case by clear and convincing proof. A mere preponderance of the testimony will not suffice. Guided by this wholesome and salutary rule proof in this case utterly fails as to the first and second grounds above set forth. Manifestly no misrepresentations of any kind were made to the plaintiff by the surgeon or the claim agent either as to the nature or extent of his injuries. As a matter of fact it clearly appears, not only from the testimony but from the allegations of the complaint as well, that none of the parties concerned knew or even suspected that the injuries sustained by the plaintiff were more than superficial. The injury to the right foot was the only injury complained of, aside from a slight bruise on the arm or shoulder which the plaintiff himself deemed so trifling and inconsequential that he refused to remove his coat so that the surgeon might examine it. And a word here as to the extent of the injuries to the foot may not be out of place. No doubt the arch of the right foot is now broken down; but for that matter so is the arch of the left foot. The testimony shows clearly that the plaintiff complained continuously of his feet [89] prior to the accident, and that his shoes were all slit up to relieve them. This goes far to show, if it does not demonstrate, that the present condition of his right foot is the result of disease or other infirmity rather than of the accident complained of.

The claim that the plaintiff was unable to read or comprehend the contents of the release by reason of his physical and mental condition is likewise un-

founded. The testimony shows that he fully comprehended all that transpired about him, and he was able to contradict the testimony of other witnesses whenever it was to his interest to do so. He told the entire work crew at supper that night that he had settled with the railroad company for thirty dollars, and in a letter written a few months later he again refers to the settlement. He took up his usual avocation as soon as he could return to Geyser after the execution of the release, and as already stated, it is all but certain that no person connected with the affair, including the plaintiff himself, had the slightest suspicion that his injuries were at all serious. Written contracts and the statute of frauds will be of little avail if contracts are to be ruthlessly set aside upon such a showing. The only question in the case that gives rise to any doubt in my mind is the question of mistake. If the plaintiff received injuries other than the superficial injury to his foot it is shown beyond question that such injuries were unknown to the contracting parties, and were not taken into consideration in the settlement made. Is this a sufficient ground in equity for setting aside the release? All the authorities agree that a release of this kind cannot be avoided for mere mistakes of opinion or prophecy; in other words, merely because the injuries prove more serious and lasting than the parties thought them to be. Some of the authorities go so far as to hold that a general release of this kind cannot be avoided for mutual mistake at all. Thus in *Houston & T. C. R. Co. vs. McCarty*, 60 S. W. 429, the only injury known to or within the

[90] contemplation of the contracting parties was an injury to the ankle; but it later developed that there were injuries to the spine and bowels, which were of much graver and more permanent character than the injuries settled for, yet the Supreme Court of Texas held that the release was an absolute bar to the action, stating its conclusion in these words:

“Our conclusion is that the release embraces all damages resulting from the injuries of the plaintiff, and that it cannot be varied by parole evidence tending to show that other injuries than that to the ankle were not in the contemplation of the parties.”

This is the extreme view, however, and is not supported by the weight of authority.

Lumley vs. Wabash R. Co., 76 Fed. 66.

Great Northern Ry. Co. vs. Fowler, 136 Fed. 118.

In the cases last cited the releases were avoided for mutual mistake of the parties, and while the form of the releases may have differed to some extent from the release now under consideration, no importance seems to have been attributed to that difference. If, therefore, the plaintiff in this action sustained injuries other than the slight injury to his foot, such injuries were not within the contemplation of the contracting parties and the release should not be permitted to stand in the way of a recovery therefor.

Now as to the nature and extent of the injuries suffered by the plaintiff as a result of the accident

complained of. It will readily be conceded that at the present time his body is poorly nourished and that his general health and physical condition are far from good. It cannot be said, however, that these conditions are attributable wholly, or even in a considerable part, to the accident. According to the testimony of one of the physicians his present ailments are, in the order of importance, first, arteriosclerosis; second, double inguinal hernia; and third, double flat foot. It does not appear from the testimony that the first of these was produced in any wise by the accident, and while [91] the condition of the right foot may have been aggravated by the accident it was not caused thereby. The plaintiff had one hernia on the right side for a period of some two years prior to the accident, caused by lifting ice into an ice-box, and the second developed soon after the accident. The course of its development, however, is left in doubt and uncertainty. The plaintiff simply states that he felt a pain in that region the day after the accident, and that he complained of such an injury to the railroad company in June following the accident; but the first definite information we have on the subject is found in the testimony of the physicians who examined him some eight or nine months later when his condition was found substantially the same as it is to-day. Beyond this the testimony throws no light upon his condition or the cause thereof. Good faith, common honesty, and the peace of society demand that compromises and settlements of this kind should be upheld unless impeached for fraud or mistake by

clear and convincing proof. As well said by Judge Sanborn in *Chicago & Northwestern Ry. Co. vs. Wilcox*, 116 Fed. 913:

“The policy of the law has always been to promote and sustain the compromise and settlement of disputed claims. It loves peace, hates broils and dissensions, and discourages the prolongation of litigation and the revival of controversies which have once been closed. The judgment of a court settles the claims submitted to it, and estops the parties from again litigating them after they have been adjudicated. In the absence of fraud or mistake, an executed agreement of settlement of an unliquidated or disputed claim constitutes as conclusive and as effectual an estoppel against the parties to the compromise from again litigating the claim thus settled as the final judgment of a court of competent jurisdiction, to the effect that the rights of the parties are as they are set forth in the agreement; and such a contract is always upheld by the courts. * * * Nor will such agreements be lightly disturbed upon confused, conflicting, or uncertain evidence of fraud or mistake. The burden is always upon the assailant of the contract to establish the vice which he alleges induced it, and a bare preponderance of evidence will not sustain the burden. A written agreement of settlement and release may not be rescinded for fraud or mistake, unless the evidence of the fraud or mistake is clear, unequivocal and convincing.”

Nevertheless the condition of the plaintiff is a pitiable one. He is illiterate and far below the average in intelligence, and if he has sustained injuries not embraced in the compromise set [92] forth in the complaint he should have his day in court and an opportunity to establish his rights before a jury. I am therefore of opinion that the release is no bar to an action by the plaintiff for any damages sustained by him aside from the injury to his foot which was clearly within the contemplation of the parties when the settlement was made. Whether a release of this kind can be set aside in part may admit of question, although I see no reason why it should not be sustained in so far as it sets forth and embodies the actual agreement of the parties.

See Lumley v. Wabash R. Co., *supra*, and cases there cited.

This question will be determined, however, when the final decree is submitted. [93]

*In the District Court of the United States for the
Eastern District of Washington, Northern
Division.*

No. 2545.

W. J. REID,

Plaintiff,

vs.

GREAT NORTHERN RAILWAY COMPANY,
a Corporation,

Defendant.

Decree.

This cause came on to be heard at this term and was argued by counsel; and thereupon, upon consideration thereof, it was ordered, adjudged and decreed as follows, viz:

That the release set forth in the complaint herein be and the same is hereby upheld and sustained in so far as it purports to release any and all claims for damages for injury to the right foot and for injuries to the arm and shoulder.

It is further considered, adjudged and decreed that said release be and the same is hereby cancelled, annulled, set aside and held for naught in so far as it purports to release any claim for damages for other injuries complained of and set forth in the complaint herein.

It is further ordered that the plaintiff have and recover herein his costs to be taxed and that execution issue therefor.

To all of which the defendant excepts and its exception is allowed.

Done in open court this 14th day of November, 1916.

(Signed) FRANK H. RUDKIN,
Judge.

[Endorsements]: Decree. Filed in the U. S. District Court for the Eastern District of Washington. November 14, 1916. W. H. Hare, Clerk. By S. M. Russell, Deputy. [94]

[Title of Court and Cause.]

Assignment of Errors.

Comes now the defendant and files the following assignment of errors, upon which it will rely in the prosecution of its appeal in the above-entitled cause from the judgment made by this Honorable Court upon the 14th day of November, A. D. 1916, in the above-entitled cause.

I.

That the United States District Court in and for the Eastern District of Washington, Northern Division, erred in allowing the plaintiff to answer the question:

“Q. State to the Court your injury and the cause of it.”

II.

That the Court erred in allowing the plaintiff to answer the question:

“Q. State if you remember anything that occurred between the claim agents and Mr. McElroy at that time. State what the conversation was.”

III.

That the Court erred in allowing the plaintiff to answer the question:

“Q. What was your object, Mr. Reid, in stating in this letter that you had recovered?”

IV.

That the Court erred in allowing the witness George T. McElroy to answer the question:

“Q. State what conversation took place between these gentlemen and these claim agents.”
[95]

V.

That the Court erred in allowing the witness, Dr. George A. Downs, to answer the question:

“Q. State to Judge Rudkin what you found at that time in your examination.”

VI.

That the Court erred in denying the motion of the defendant to strike all the testimony in the record received subject to its objection, and all testimony relating to conditions or injuries developing subsequent to the time of the settlement, and all testimony relating to the injuries, if any, which were not known to either or both parties at the time of the settlement.

VII.

That the Court erred in denying the motion of the defendant to dismiss the bill to set aside the release.

VIII.

That the Court erred in finding that the release was no bar to an action by the plaintiff for any damages sustained by him aside from the injury to his foot.

IX.

That the Court erred in rendering and entering judgment in said action in favor of the plaintiff and against the defendant.

X.

That the Court erred in rendering and entering judgment herein, sustaining said release in so far as

it purported to release any and all claims for damages for injury to the right foot and for injuries to the arm and shoulder, and cancelling, annulling, setting aside and holding for naught said release in so far as it purported to release any claim for damages for other injuries, complained of and set forth in the complaint in said action.

XI.

That the Court erred in rendering and entering judgment setting aside the release described in said complaint. [96]

XII.

That the Court erred in rendering and entering a judgment cancelling, annulling and setting aside and holding for naught said release, in so far as it purports to release any claim for damages for other injuries complained of and set forth in the complaint in said action.

WHEREFORE, the said Great Northern Railway Company, appellant, prays that the said decree be reversed and the District Court directed to dismiss the bill and complaint herein.

(Signed) CHARLES S. ALBERT,
THOMAS BALMER,

Solicitors for Defendant and Appellant.

Due service of the within Assignment of Errors by true copy thereof, is hereby admitted at Spokane, Washington, this 8th day of December, 1916.

(Signed) STEAKE & NUZUM,
NUZUM, CLARK & NUZUM,
Solicitors for Plaintiff.

[Endorsements]: Assignment of Errors. Filed in the U. S. District Court for the Eastern District of Washington, December 8, 1916. W. H. Hare, Clerk. By S. M. Russell, Deputy. [97]

[Title of Court and Cause.]

**Petition for Appeal to the United States Circuit
Court of Appeals for the Ninth Circuit and
Order Allowing Same.**

To the Honorable District Court of the United
States for the Eastern District of Washington,
Northern Division:

The above-named defendant, Great Northern Railway Company, feeling itself aggrieved by the findings of the Court, the decree and judgment made and entered by said Court on the 14th day of November, 1916, in the above-entitled cause, comes now by Charles S. Albert and Thomas Balmer, its attorneys, and does hereby appeal from said decree to the United States Circuit Court of Appeals for the Ninth Circuit, for the reasons specified in the assignment of errors filed herein, and prays that this appeal may be allowed, and that citation issue, as provided by law, and that a transcript of the record, proceedings and papers on which said decree was based, duly authenticated, may be sent to the United States Circuit Court of Appeals for the Ninth Circuit, and that the proper order touching the security to be required of it to perfect its appeal, be made, fixing the amount of security which the defendant shall give and furnish upon said appeal, and

that upon the giving of such security, all further proceedings of this Court be suspended and stayed until the determination of said appeal by the United States Circuit Court of Appeals for the Ninth Circuit.

Dated this 8th day of December, A. D. 1916.

(Signed) CHARLES S. ALBERT,
THOMAS BALMER,

Solicitors for Defendant. [98]

The foregoing petition is granted and said appeal is allowed upon the defendant giving a bond, conditioned as required by law in the sum of five hundred dollars.

Dated this 8th day of December, 1916.

(Signed) FRANK H. RUDKIN,
United States District Judge.

Copy of the within petition for appeal and order allowing the same and fixing bond acknowledged this 8th day of December, 1916.

(Signed) STEAKE & NUZUM,
NUZUM, CLARK & NUZUM,
Solicitors for Plaintiff.

[Endorsements]: Petition for Appeal and Order Allowing Same. Filed in the U. S. District Court for the Eastern District of Washington, December 8, 1916. W. H. Hare, Clerk. By S. M. Russell, Deputy. [99]

[Title of Court and Cause.]

Order Allowing Bond.

Defendant, Great Northern Railway Company, having this day filed its petition for the allowance of an appeal from the findings and decision, decree and judgment thereon, made and entered herein to the United States Circuit Court of Appeals in and for the Ninth Judicial Circuit, together with an assignment of errors within due time, and also praying that an order be made, fixing the amount of security which defendant should give and furnish upon said appeal, and that upon the giving of said security all further proceedings of this Court be suspended and stayed until the determination of said appeal by said United States Circuit Court of Appeals in and for the Ninth Judicial District, and said petition having been this day duly allowed;

Now, therefore, it is ORDERED, that upon the said defendant, Great Northern Railway Company, filing with the clerk of this Court a good and sufficient bond, in the sum of five hundred dollars, to the effect that if the defendant, Great Northern Railway Company, appellant, shall prosecute said appeal to effect and answer all damages and costs if it fails to make its plea good, then the said obligation to be void; else to remain in full force and effect, said bond to be approved by the Court. That all further proceedings in this Court be, and they are hereby suspended and stayed until the determination of said appeal by said United States Circuit Court of Appeals. [100]

Dated this 8th day of December, 1916.

(Signed) FRANK H. RUDKIN,
District Judge.

Due service of the within order, by a true copy thereof, is hereby admitted at Spokane, Washington, this 8th day of December, 1916.

(Signed) STEAKE & NUZUM,
NUZUM, CLARK & NUZUM,
Solicitors for Plaintiff.

[Endorsements]: Order Allowing Bond. Filed in the U. S. District Court for the Eastern District of Washington. December 8, 1916. W. H. Hare, Clerk. By S. M. Russell, Deputy. [101]

[Title of Court and Cause.]

Bond on Appeal.

KNOW ALL MEN BY THESE PRESENTS, That we, Great Northern Railway Company, as principal, and National Surety Company of New York, as surety, are held and firmly bound unto W. J. Reid in the full and just sum of five hundred dollars (\$500), to be paid to the said W. J. Reid, for which payment well and truly to be made, we bind ourselves, our successors and assigns, jointly and severally, by these presents.

Sealed with our seals and dated this 8th day of December, 1916.

WHEREAS, lately at the September Term, A. D. 1916, of the District Court of the United States for the Eastern District of Washington, Northern Division, in a suit pending in said court between W. J.

Reid, plaintiff, and the Great Northern Railway Company, defendant, a final decree and judgment was entered against the said defendant, and the said defendant, Great Northern Railway Company, having obtained from said court an order allowing the appeal to reverse the judgment in the aforesaid suit, and a citation directed to said W. J. Reid, is about to be issued, citing and admonishing him to be and appear at the United States Circuit Court of Appeals for the Ninth Circuit, to be holden at the city of San Francisco, thirty days from and after the filing of said citation;

Now, the condition of the above obligation is such that if the said Great Northern Railway Company shall prosecute its appeal to effect, and shall answer all damages and costs that may [102] be awarded against it, if it fails to make its plea good, then the above obligation to be void; otherwise to remain in full force and effect.

(Signed) GREAT NORTHERN RAIL-
WAY COMPANY.

By CHARLES S. ALBERT,
THOMAS BALMER,

Its Attorneys.

(Signed) NATIONAL SURETY COM-
PANY.

[Corporate Seal] JAMES A. BROWN,
Resident Vice-President.
F. S. JONES,
Resident Assistant Secretary.

Plaintiff is satisfied with the within bond and the surety thereon.

(Signed) STEAKE & NUZUM,

Solicitors for Plaintiff.

The foregoing bond is approved as to form, amount and sufficiency of surety this 8th day of December, 1916.

(Signed) FRANK H. RUDKIN,

Judge of the U. S. District Court, Eastern District of Washington.

[Endorsements]: Bond on Appeal. Due service of the within bond by a true copy thereof is hereby admitted at Spokane, Washington, this 8th day of December, A. D. 1916. (Signed) Steake & Nuzum and Nuzum, Clark & Nuzum, Attorneys for Plaintiff. Filed in the U. S. District Court for the Eastern District of Washington. December 8, 1916. W. H. Hare, Clerk, By S. M. Russell, Deputy.
[103]

[Title of Court and Cause.]

Stipulation for Transcript of Record on Appeal.

It is hereby stipulated between the plaintiff, by his solicitors, and the defendant, by its solicitors, that the transcript of the record on appeal in the above-entitled cause, shall be made up of the following papers:

Subpoena with marshal's return;

Bill in Equity;

Answer;

Opinion of Court;

Judgment and Decree.

Statement and Bill of Exceptions and Exhibits 1, 2,
3 and 4;

Petition for Appeal and order allowing same;

Assignment of Errors;

Bond on Appeal;

Order allowing Bond;

Original Citation with Acceptance of Service;

Copy of Citation lodged with clerk for Appellee;

Stipulation as to Making Up of Record;

—which comprise all the papers, records and other proceedings which are necessary to the hearing of the appeal in said action in the United States Circuit Court of Appeals. and that no other papers, records or proceedings than those above mentioned need be included by the clerk of said court in making up his return to said citation as part of such record.

(Signed) STEAKE & NUZUM,

NUZUM, CLARK & NUZUM,

Solicitors for Plaintiff.

CHARLES S. ALBERT,

THOMAS BALMER,

Solicitors for Defendant.

[Endorsements]: Stipulation for Transcript of Record on Appeal. Filed in the U. S. District Court for the Eastern District of Washington. December 8, 1916. W. H. Hare, Clerk. By S. M. Russell, Deputy.

[Endorsed]: No. 2896. United States Circuit Court of Appeals for the Ninth Circuit. Great Northern Railway Company, a Corporation, Appellant, vs. W. H. Reid, Appellee. Transcript of Record. Upon Appeal from the United States District Court for the Eastern District of Washington, Northern Division.

Filed December 22, 1916.

F. D. MONCKTON,
Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

By Paul P. O'Brien,
Deputy Clerk.

Citation on Appeal.

The President of the United States to W. J. Reid
and to A. H. Steake and H. N. Nuzum and
Nuzum, Clark & Nuzum, His Attorneys,
Greeting:

You are hereby cited and admonished to be and appear at the United States Circuit Court of Appeals for the Ninth Circuit, to be held at the city of San Francisco in the State of California, within thirty days from the date hereof, pursuant to an appeal filed in the clerk's office of the District Court of the United States for the Eastern District of Washington, Northern Division, wherein W. J. Reid is plaintiff and you are appellee, and said Great Northern Railway Company is defendant and is complainant, and show cause, if any there be, why the decree and judgment in said appeal mentioned should not be

corrected, and speedy justice should not be done to the parties in that behalf.

WITNESS the HONORABLE EDWARD DOUGLASS WHITE, Chief Justice of the Supreme Court of the United States of America, this 8th day of December, 1916, in the year of Independence of the United States the one hundred and forty-first.

FRANK H. RUDKIN,
United States District Judge for the Eastern District of Washington, Northern Division.

[Seal] Attest:

W. H. HARE,

Clerk.

Due service of the within citation by true copy thereof is hereby admitted at Spokane, Washington, this 8th day of December, A. D. 1916.

STEAKE & NUZUM.

NUZUM, CLARK & NUZUM.

Solicitors for Plaintiff.

[Endorsed]: No. 2545. In the District Court of the United States for the Eastern District of Washington, Northern Division. W. J. Reid, Plaintiff, vs. Great Northern Ry. Co., Defendant. Citation on Appeal. Filed in the U. S. District Court, Eastern District of Washington, Dec. 8, 1916. Wm. H. Hare, Clerk. S. M. Russell, Deputy.

No. 2896. United States Circuit Court of Appeals for the Ninth Circuit. Original. Citation on Appeal. Filed. Dec. 29, 1916. F. D. Monckton, Clerk.

*In the District Court of the United States for the
Eastern District of Washington, Northern Di-
vision.*

W. J. REID,

Plaintiff,

vs.

GREAT NORTHERN RAILWAY COMPANY, a
Corporation,

Defendant.

Stipulation for Printing Record.

IT IS HEREBY STIPULATED AND
AGREED between the appellant by its solicitors,
and the appellee by its solicitors, that in printing the
record in the above-entitled cause the clerk shall
cause the following to be printed for the considera-
tion of the Court on appeal:

Bill in Equity.

Answer.

Opinion of Court.

Statement and Bill of Exceptions, Including Ex-
hibits.

Judgment and Decree.

Original Citation.

Petition for Appeal and Order Allowing Same.

Assignment of Errors.

Bond on Appeal.

Order Allowing Bond.

Stipulation as to Making Up Record.

AND IT IS FURTHER STIPULATED that in
printing said record there may be omitted the title
of the court and cause on all papers, excepting the
first page, and that in lieu of said title of court and

cause there be inserted in place and stead thereof,
the following words: "Title of Court and Cause."

Dated this 8th day of December, 1916.

CHARLES S. ALBERT,

THOMAS BALMER,

Solicitors for Appellant

STEAKE & NUZUM,

NUZUM, CLARK & NUZUM,

Solicitors for Apellee.

[Endorsed]: No. 2896. United States Circuit
Court of Appeals for the Ninth Circuit. W. J. Reid,
Plaintiff, vs. Great Northern Ry. Co., Defendant.
Stipulation for Printing Record. Filed Dec. 22,
1916. F. D. Monckton, Clerk.